Supreme Court, U.S.
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No. 08-733

In The
Supreme Court of the United States

Debabrata Saha,

Petitioner

v.

Donald Lehman, individually and in his capacity as Executive Vice President for Academic Affairs, The George Washington University,

Timothy Tong, individually and in his capacity as Former Dean of School of Eng. and Applied Science, The George Washington University,

and

The George Washington University,

Respondents

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The District of Columbia Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Petitioner Saha is a tenured professor in George Washington University (GWU). President Trachtenberg of GWU, in 1997, called Prof. Saha a whistle blower for his role on matters of academic integrity. Since then Prof. Saha has been suspended four times; also, he was accused of scientific misconduct, a charge the administration was forced to drop after investigation. On August 29th, 2005, GWU instructed Prof. Saha on his teaching assignment for September 1st. On August 30th, GWU reconfirmed the assignment. GWU's official bulletin board continued to instruct Prof. Saha the same assignment till Sept. 2nd, 2005. While GWU neither delivered nor informed Prof. Saha of any notice of suspension prior to his lecture on September 1st evening, the questions are

(a) Whether GWU violated petitioner's fourth and fourteenth amendment rights when, on Sept. 1st, he was seized and removed against his will from the assigned classroom in the middle of his lecture, and

(b) Whether GWU violated petitioner's civil rights under 42 U.S.C. §1983 when, after being seized on Sept. 1st evening, he was paraded against his will in a crowded library surrounded by uniformed security officers, and paraded once again on Sept. 2nd morning in his own department.

Respondent GWU, **only later**, communicated a letter that claimed petitioner Saha was suspended effective August 29, 2005.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Debabrata Saha respectfully petition for a writ of certiorari to review the judgment of The United States Court of Appeals for The District of Columbia Circuit.

OPINIONS BELOW

The U.S. Court of Appeals for the District of Columbia Circuit granted summary affirmance in favor of respondents (appellees) in its order dated July 31, 2008; the order is reprinted as Appendix B. The D.C. Circuit denied rehearing en banc on Sept. 10, 2008; its order is reprinted as Appendix A. The decision of U.S. District Court, D.C. is reported at 537 F. Supp.2d 122; its memorandum opinion dated March 12, 2008 is reprinted as Appendix C.

JURISDICTION

The U.S. Court of Appeals for the District of Columbia Circuit issued its decision on July 31, 2008, and denied rehearing on Sept. 10, 2008. This Court has jurisdiction under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The Fourth Amendment to the United States Constitution provides in relevant part:"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

2. The Fourteenth Amendment to the United States Constitution provides in relevant part:"No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. 42 U.S.C. § 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, anyone to the deprivation of any rights, privileges, or immunities secured by the Constitution, and laws, shall be liable to the party injured in action at law."

STATEMENT OF THE CASE

A. Background:

The events that are most relevant to this case took place over a period of five days beginning

August 29, 2005 through September 2nd, 2005. The petitioner, however, believes that these events need to be evaluated in the context of a broader picture of twelve years long dilemma that started with a whistle blowing in 1996.

Twelve Years Long Dilemma:

This case stemmed from a conflict of the universal academic principles that make teaching a noble profession[1] and corrupt practices of GWU administration that compromised the academic integrity[2]. This conflict, in 1996, led to what came to be known as GWU's Qualifying Exam Scandal: a group of faculty members with the encouragement from a group of high level administrators, such as VP for Academic Affairs (Linda Salamon), Dean of Engineering School (Gideon Frieder), and Chairwoman of the Department of Electrical Engineering and Computer .Science (Mona Zaghloul), *through vote of democracy*, gave passing grades to every student of a group taking Qualifying Exam that year without looking at what they wrote in the exam; they did so in a hurry to cover up wrong doings in the school. In an attempt to deter such practices, petitioner brought these matters to the attention of faculty and administrators through a "Dear Colleague letter" (*See* Appendix D).

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[1] The conflict is detailed in the article "Still Teaching is Noble in America!" by Debabrata Saha, Nov. 14, 2006 (*See Exhibits* 20, November 8, 2007 Response, Case 1:06-01493 (RCL), U.S. District Court). Its Preface part is reprinted in Appendix F.

[2] Plaintiff Exhibits 21 & 22, November 8, 2007 Response, Case 1:06-01493 (RCL), U.S. District Court

This letter generated frustration and fury, and brought in malice and vengeance against petitioner. In 1997 spring semester, on February 6, *without any prior notification*, the petitioner was removed from his classroom and escorted out by security officers; at the time of removal, the petitioner was notified that he was suspended by Vice President for Academic Affairs, Donald R. Lehman. Later it was found through the office of President Trachtenberg that VP Lehman wrote three letters on the status of petitioner, none of which petitioner received. On February 7, President Trachtenberg sent copies of those letters to the petitioner. (It is revealed, eight years later in 2005, that GWU administration created a secret mail box for the petitioner to divert his communications to an unknown location. See Plaintiff Exhibits 52, Case 1:06-01493-RCL)

Afterwards, on May 12, 1997, in a one-to-one fifty five minutes meeting, President Trachtenberg called the petitioner a Whistle Blower, and gave verbal instructions. Among others, those instructions included suggestions (a) to keep low profile, (b) to avoid interactions with those faculty members who were directly responsible for the Qualifying Exam scandal, and (c) not to report to the then Chairwoman Mona E. Zaghloul (*See* Appendix E for petitioner's July 23, 1997 letter to President Trachtenberg).

This marked the beginning of a decade long Retaliation by VP Lehman (one of the defendants), a chronological account of which is concisely reflected in "Time Line of GWU's Retaliation", presented afterwards in this section. Prof. Saha was suspended by VP Lehman four times in eight years. Other than teaching opportunity, Prof. Saha was kept in total

isolation from the student community. He was ostracized in the department; no faculty member even knocked on his door for any social interaction for almost a decade.

In the beginning of fall semester of 2005, on two different days, petitioner was paraded by uniformed police officers in front of faculty, students and staff for a pretext that was later found to be untrue[3]. The petitioner was suspended without due process, and, thereafter, VP Lehman used a fraudulent mechanism (the fraud was confirmed by direct testimony of President Trachtenberg in GWU's Senate Hearing) to initiate **the very first tenure revocation attempt in 187 years history of GWU**. VP Lehman denied the petitioner due process guaranteed under GWU Faculty Code. After petitioner communicated these irregularities, President Trachtenberg, on Dec. 28, 2006, wrote to the petitioner that VP Lehman recused himself on all matters that related to the petitioner.

Next, without any notice or communication, the petitioner was locked out of his office on March 15, 2007, and GWU stopped petitioner's paychecks effective March 1st, 2007. Only recently, in February of 2008, GWU presented a fraudulent letter from

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[3] Petitioner was removed from class and his office, and then paraded on two occasions under the pretext of suspension. Petitioner's suspension resulted from VP Lehman's accusation that petitioner Prof. Saha did not respond to his June 27 & July 26, 2005 letters which he wrote when Prof. Saha was not on GWU's payroll and absent from campus. During GWU Faculty Senate hearing Lehman was questioned on those two letters and Lehman confessed that he knew Prof. Saha did not receive those two certified letters; those two letters were found returned to GWU. Thus Lehman was disingenuous and wrongful in writing the August 29, 2005 suspension letter. Also, this letter was communicated only afterwards to entrap Prof. Saha in classroom setting.

some John Williams as the proof of termination of petitioner's service; in absence of the approval of Board of Trustees (as required by GWU Faculty Code), this letter of Williams, *which does not even bear any signature or mention of the office of origin*, has no legal merit. On Sept. 26, 2008, GWU Faculty Senate, went through substantiation of petitioner's May 9, 2008 Grievance; but in that meeting, the Chair of the Senate Dispute Resolution Committee (Prof. Kurt Darr) who was supposed to examine the evidence recused himself from the position of decision making.

Factual summary of five days: [Aug. 29 - Sept. 2]

1. On August 29, 2005 petitioner received instruction from GWU's ECE Dept. on his Fall teaching responsibilities which included assigned classroom, number of enrolled students, days and time of two classes as follows :

ECE-203(10): 17 students, Tomp 203, Mon 7:10-8:40
ECE-243(10): 7 students, Gel 609, Thurs 7:10-8:40

ECE Secretary Debby Swanson's signed statement (Exhibit 49, November 8, 2007 Response[4], case 1:06-01493-RCL, U.S. District Court) confirms

[4] Petitioner Saha submitted Plaintiff Exhibit 1 through 55 and Affidavit # 1 through 14 in support of his response (Docket 32, 11/08/2007) to GWU's motion for summary judgment in the District Court case 1:06-01493 (RCL). These are also available in Exhibit 4 of the 512 pages of document submitted by Appellees (Respondents) in support of Motion for Summary Affirmance (ID # 1119371), D.C. Circuit Court of Appeals, Case No. 08-7047.

that teaching assignment was given on Aug. 29, 2005.

2. On August 30, 2005 petitioner checked the Official ECE Bulletin Board and noted down the same teaching schedule; Plaintiff Exhibit 10 includes that handwritten note. Petitioner also briefly checked with the Department and he was told that there was no change from the assignment that was given the day before on Aug. 29.

3. On Sept. 1st, 2005 petitioner arrived in the classroom Gel-609 well before 7:10 pm; after 10 minutes or so into the lecture a uniformed police officer named Francis Williams Jr. entered the classroom and asked the petitioner to stop the lecture. When petitioner asked him about the reason, he told that petitioner was suspended by the University authority. Petitioner was shocked, embarrassed, and surprised by his statement, in particular because it was happening in front of the students. Petitioner told that he was not notified by anybody about the suspension. Petitioner asked him whether he had the letter of suspension with him. The officer did not have that letter or any other order with him. When Petitioner told that he wasn't convinced that he should stop, the officer told that if petitioner didn't stop, he would be removed and then the officer drew petitioner's attention to the door. Then petitioner noticed that three or four more uniformed officers were waiting at the door.

Fall 1986	—	Saha joins GWU's EECS Dept.
Spring 92	—	Board of Trustees awards tenure effective fall, 1993
Spring 96	—	**Saha blows whistle**: Qualifying Exam Scandal; Retaliation begins
Spring 97	—	1st **Suspension** by VP Lehman & Pres. Trachtenberg calls Saha Whistle Blower
Fall 97	—	1st Reinstatement & back to teaching
Jan.22, 99	—	2nd **Suspension** by VP Lehman & Plagiarism charge by VP Lehman
April 1, 99	—	EECS Personnel Comm. Exonerates Saha on suspension; Lehman drops Plagiarism charge, 2nd Reinstatement
Jan.1-13, 2003	—	3rd **Suspension** & Reinstatement; both occurred secretly without any knowledge of Saha
Spring 2005	—	GW brings back Zaghloul as Chair for six months & secret ground work for Saha's tenure revocation begins
Summer2005	—	Saha not on campus; Lehman-Tong-Zaghloul team finalize Fraud-strategy
Sept.1, 2005	—	Entrapment & Police action in Saha's class; Secret Entry of Dean Tong into Saha's office; **Fourth Suspension**
Sept.16, 2005	—	Lehman's Fraudulent initiation of Saha's tenure revocation
Dec.28, 2006	—	Allegations of Fraud & Rigging: Lehman recuses himself
March 2007	—	GWU stops paying Saha & Saha locked out of his office
Feb.20, 2008	—	GWU presents fraudulent termination letter without approval of B.O.Trustees
Sept.26, 2008	—	Substantiation of Saha's 2008 Grievance

Time Line of GWU's Retaliation

Though the officer did not threaten petitioner with the word "Arrest", yet verbal warning of removal from the class carried similar meaning to him. Very quickly petitioner realized that it was more dignified to stop the lecture, even though that was against his will, than being removed forcefully by four or five uniformed officers in front of the class. So, petitioner agreed to stop the lecture, collected his notes etc. and stepped out to surrender to the uniformed officers. Then petitioner was told that he had to leave the building though he was not given any bar notice; however, as a member of GWU faculty, he had the right to be in the library and move freely wherever he chose to be. Surrounded by those officers, petitioner was then paraded through the hallway in front other waiting students and former Chair of the department (who happens to be a former student of the petitioner) to the elevator, and then down to the crowded lobby of the library. Then they escorted petitioner out of the building. Petitioner was not given any bar notice or any letter of suspension. Petitioner told them that he was going to his Department to check mail. Petitioner did check the mail and no letter of suspension was in the mailbox.

4. On Sept. 2nd, 2005 morning petitioner went to his Department around 10 am, checked the mail (no letter of suspension was found), and checked ECE Bulletin Board which was showing that he was still scheduled to teach ECE-203(10) and ECE-243(10). It should be noted that it was ECE-243(10), petitioner was removed from the night before.

Petitioner spoke to secretary Debby Swanson (who gave him teaching schedule on Aug. 29 and reconfirmed on August 30), described to her the uniformed police incident in his classroom and asked her to inform him as soon as Dept. Chair Korman arrive in the office. Petitioner found a sealed envelope on his table; he told secretary Swanson that he would be waiting to open the envelope in front of Chair Korman.

While waiting in his office, a police officer knocked at the door. Special officer Aaron M. Morningstar along with two other female officers entered the room, surrounded the petitioner and asked him to leave the building. When petitioner asked why, they told petitioner was barred from the campus. They performed the following tasks:

(i) checked petitioner's GW ID, Driver License, and noted his S.S. number, (ii) took away his office keys, (iii) gave him a handwritten note (Plaintiff Exhibit #2, 1:06-cv-01493-RCL) suggesting him to see Dean Tong and VP Lehman before coming back to campus, (iv) served a Bar Notice (Plaintiff Exhibit #1), (v) upon request, allowed petitioner to make couple of phone calls, one to secretary of Chair Korman and another to secretary of Dean Tong, and (vi) at the end of these events which took about forty minutes with the door open, he was paraded[5] surrounded by a few uniformed officers in the front

[5] Petitioner submitted Affidavit #1 and #6 illustrating (a) disputed material facts and inconsistencies in the declarations of Officer Archie and Officer Williams, and (b) the unnecessary publicity that caused petitioner's humiliation and

and a few at the back through the long hallway to the elevator, and then down to the parking garage. They then escorted petitioner out of the building.

B. Undisputed Material Facts

1. Wrongful Suspension without Due Process[6]: VP Lehman was disingenuous and wrongful in writing the August 29, 2005 suspension letter.

2. Lack of Notice of Suspension: GWU did not make any reasonable effort to communicate suspension to petitioner Saha prior to his lecture on Sept 1st, 2005

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embarrassment in a campus where he had been teaching for almost two decades.

[6]Excerpt from Plaintiff Affidavit #7, November 8, 2007 Response, Case 1:06-01493 (RCL), U.S. District Court
"**C. Credibility of Lehman** :

- **June 27 & July 26, 2005 Letters** : During GW Faculty Senate Hearing, Lehman was extensively questioned on the issue of these two letters and Lehman confessed that he knew Prof. Saha did not receive those certified letters, and those two letters were found returned to GWU (Re. Plaintiff Exhibit 7). Thus Lehman was disingenuous in writing the August 29, 2005 suspension letter that led to tenure revocation hearing. Plaintiff Saha request the court to consider this evidence to asses the credibility of Defendant Lehman.
- **February 5, 1997 Letter** : Plaintiff asserts that upon request of the court, evidence will be introduced to establish that in the past, Lehman administration played foul with the delivery of February 5, 1997 suspension letter which led to a false arrest in 1997."

though they could easily avail to any of Five Easy Options[7]. There is absolutely

(a) NO evidence that would establish the time line the letter was written so that suspension could be effective on August 29, 2005, and

(b) NO evidence that would establish the proof of delivery of that letter (Quick messenger invoice is much less than proof of delivery) prior to Sept. 2nd, 2005.

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[7] **Five Easy Options GWU could avail to :**

- Inform Saha on Aug. 29 during his office hours (by phone, by putting the letter in his mail box, by hand delivery in his office or through Secretary Swanson in the ECE Department, who gave Saha on August 29 the teaching schedule, class room no., enrollment figures etc.)
- Inform Saha on Aug. 30 when he was present in his office (by phone, by putting the letter in his mail box, by hand delivery in his office or through Secretary Swanson in the ECE Department, who on August 30 reconfirmed that teaching schedule remained unchanged).
- Inform Saha at his residence (by phone, by overnight express US mail or Fedex).
- By displaying correct teaching schedule on ECE Bulletin Board. The Bulletin Board consistently misled Saha till the morning of Sept. 2nd, 2005.
- Inform Saha at the door of the classroom when he arrived there to teach (it should be noted GWU kept a substitute teacher waiting in the hallway while instructed police to wait outside the classroom to escort and perp walk Prof. Saha. GWU could use any of them to hand over the letter of suspension before Prof. Saha started giving the lecture).

3. **Entrapment**[8]: GWU administration misled petitioner Saha to go to teach class on Sept 1st, 2005 evening, while instructed security police to escort him out.

C. Proceedings Below

I. The District Court

Opinion of Judge Lamberth, dated March 12, 2008 is reported at **537 F. Supp.2d 122** (*see* Appendix C) with the following Background and Holdings.

"Background: Former professor brought action against university and officials, stemming from his suspension and removal from campus. Defendants moved for summary judgment.
Holdings: The District Court, Royce C. Lamberth, J. held that :
(1) professor was not deprived of civil rights;
(2) professor was not actually detained;
(3) there was no publicity of events at issue; and
(4)statute of limitations governing contract claims was inapplicable.
Motion Granted."

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[8] **Following two exhibits establish GWU instructed Petitioner Saha to teach on Sept. 1st, 2005 :**

- Secretary Debby Swanson's signed statement dated Aug. 29, 2005 (Plaintiff Exhibit 49, November 8, 2007 Response, Case 1:06-01493 (RCL), U.S. District Court)
- Aug.30, 2005 Instruction from ECE Bulletin Board (Plaintiff Exhibit 10, November 8, 2007 Response, Case 1:06-01493 (RCL), U.S. District Court)

Arguments on District Court's Opinion

(a) NEGLIGENCE and FAILINGS of Judge Lamberth in examining the Recod

1. Entrapment: Judge Lamberth failed to take into consideration a very IMPORTANT piece of evidence which is reprinted as Appendix G. This signed memo of ECE secretary Debby Swanson confirms with certainty that on Aug. 29, 2005, Prof. Saha was given instruction for teaching assignments and not notification of suspension. Judge, instead of examining the evidence, was wrongfully influenced by the respondents' pleadings.

2. Tenure Revocation: Judge Lamberth in his opinion dated March 12, 2008 (Appendix C) wrote

"As a preliminary matter, the Court notes that plaintiff filed Count IV as part of his First Amended Complaint filed January 5, 2007, before the University actually revoked his tenure on March 1st, 2007."

Court dockets of 1:06-cv-01493-RCL, as of March 12, 2008, does not include a single piece of evidence that would substantiate his above opinion. In fact, petitioner's tenure has never been revoked and no termination letter has ever been given to the petitioner.

Judge Lamberth' s opinion was contaminated by influence outside the arena of evidence.

3. Confinement and Publicity: Judge Lamberth in his opinion dated March 12, 2008 (Appendix C) wrote *"Alternatively, where plaintiff cannot show that he has been actually detained, plaintiff must show a*

"reasonable apprehension of present confinement" based upon "the actions or words of the defendant" and not the "subjective state of mind of the plaintiff.""

Judge Lamberth failed to take note of petitioner's forty minutes of confinement to his sitting chair in his office on Sept. 2nd, 2005 while three police officers interrogated and confiscated item from him with his door open for public viewing, and a fourth officer standing at the door. Judge Lamberth failed to examine disputed material facts presented by the petitioner in his Affidavit #1 through 6.

Forty minutes of confinement was real and was based upon "the actions or words of the police officers" and not the "subjective state of mind of the petittioner". Judge Lamberth failed to take a note of the fact that by not giving Prof. Saha the notice of suspension, any bar notice or any instruction during his false arrest on Sept. 1st evening, the respondents intentionally inflicted the confinement on the petitioner on Sept. 2nd morning.

4. Suspension and False Arrest: Judge Lamberth in his opinion dated March 12, 2008 (Appendix C) wrote

"The relevant factor here is that defendants have sufficiently established that plaintiff was in fact suspended , and under the terms of that suspension, he was not to come to campus to teach or perform any University responsibilities."

Court dockets of 1:06-cv-01493-RCL, as of March 12, 2008, shows **there is absolutely**

(a) **NO** evidence that would establish the time line the Aug. 29, 2005 letter was written so that suspension could be effective on August 29, 2005, and
(b) **NO** evidence that would establish the proof of delivery of that letter (Quick messenger invoice is much less than proof of delivery) prior to Sept. 2nd, 2005,
Judge Lamberth' s opinion was contaminated by influence outside the arena of facts substantiated by evidence.

5. Secret Mail Box: Judge Lamberth failed to take into consideration that GWU administration created a secret mail box for the petitioner to divert his communications to an unknown location. See Plaintiff Exhibits 52, Case 1:06-01493-RCL. This secret mail box may have contributed to disruptions in communication on notice issues.

It is a possibility that District Court did not care to read through documents and consider evidence submitted by the petitioner because petitioner proceeded as pro se. Nonetheless, failure to examine the record without any influence other than the facts substantiated by evidence, is a great injustice and provides justification for granting the writ.

(b) Petitioner's Arguments on the Opinion

1. **Wrong Characterization**: Judge Lamberth described petitioner as former professor in spite of the fact that petitioner's tenure was never revoked, and no termination letter was served. The

characterization "former" is an admission of facts which are not true.

2. Lack of Notice : The District court erred in holding the view that, in the present case, summary judgment can be granted without drawing any conclusion as to whether GWU communicated the suspension to the petitioner.

(a) As evidenced in the following excerpt from the opinion, the court indeed did not draw any conclusion on the notice issue of suspension:

"In any event, whether plaintiff actually received the suspension letter is not an issue presently before the Court. As such, this Court draws no conclusion on that issue." (in Appendix C, Foot Note 16)

(b) The opinion went on to say:

"The relevant factor here is that defendants have sufficiently established that plaintiff was in fact suspended," (in Appendix C, Foot Note 16)

This is an important conclusion of the Court. But the court failed to justify how the relevant factor was established by the defendants when the defendants failed to communicate. Quite contrary, the cause of action in this case stems from defendants' failure and lack of willingness to provide the suspension notice to the plaintiff (petitioner), though they could avail to any of the **Five Easy Options** (*see* foot note 7 earlier in this section).

It appears that the district court here served as the spoke person of the defendants (respondents) without making any attempt to substantiate its conclusion.

(c) Court ignored the fact that Lack of notice of suspension was unlawful and denial of civil rights in absence of proper notice was a constitutional violation.

3. **Entrapment**: The Court failed to recognize the issue of entrapment, though
There is absolutely
(a) **NO** evidence that would establish the time line the Aug. 29, 2005 letter was written so that suspension could be effective on August 29, 2005, and
(b) **NO** evidence that would establish the proof of delivery of that letter (Quick messenger invoice is much less than proof of delivery) prior to Sept. 2nd, 2005,

Whereas,
(c) there is signed statement from Secretary Swanson (Plaintiff Exhibit 49) and instruction of the Bulletin Board (Plaintiff Exhibit 10) that establish with certainty that on Aug. 29 and Aug. 30, Prof. Saha was misled to believe in the teaching assignment that caused his entrapment in the classroom and, thereafter, the humiliations by security officers.

4. **Due Process**: The District Court failed to recognize that Aug. 29, 2005 suspension lacked due process.
(a) August 29 suspension was based on Lehman's accusation that petitioner Prof. Saha did not respond to his June 27 & July 26, 2005 letters; the court failed to observe that during those summer months, Prof. Saha was not on GWU's payroll and was absent from campus. Also,

(b) VP Lehman's confessed during GWU's Senate hearing (*See* foot note 6) that he knew Prof. Saha did not receive those letters and they were returned to GWU. Lehman was thus disingenuous in writing the suspension letter without giving Prof. Saha the opportunity to respond. It is quite ironic that on Aug. 29, Prof. Saha was on campus and maintained regular office hours.

(c) Further June 27 and July 26 letters drew impetus from the faculty input from Feb.10 and May 2nd, 2005 meetings. GWU denied Prof. Saha due process and/or failed to follow the customary practice when it failed to notify him of the SECRET Feb. 9 meeting and May 2nd, 2005 meeting as well. Schaffner panel, during GWU Senate hearing, threw out May 2nd meeting and the vote in that meeting from the record. District court failed to recognize this lack of due process.

5. Issue of Malice: During false arrest on Sept. 1st evening, Prof. Saha was neither given any note nor told of his bar status from the campus. Such notice or a copy of the suspension letter would avoid humiliation, forty minutes imprisonment, and perp walk of Prof. Saha on Sept. 2nd morning.

By not giving Prof. Saha any instruction on Sept.1st evening about his bar status from campus, defendant Lehman and GWU administration clearly established its act of continued vengeance and malice toward Prof. Saha for his 1996 whistle blowing.

District Court failed to recognize this malice and erred in drawing conclusions on violation of petitioner's civil rights.

6. Secret mail box: District court failed to understand the importance of GWU's creation of secret mail box for petitioner that may have contributed in breakdown of communication on suspension as well as lack of communication over last one decade.

7. GWU's False Declarations and Disputed Facts: District Court failed to take in to consideration the disputed facts raised in (petitioner's) Plaintiff' Affidavits #1 through #6 in November 8, 2007 Response, 1:06-01493 (RCL) which contested GWU's false declarations on events of Sept. 1st and 2nd,2005.

8. Constitutional Violations:
District court's **NEGLIGENCE** in examining the Recod led to **overwhelming FAILINGS** in recognizing (a) entrapment, (b) lack of notice (of suspension, bar status or warrant), (c) lack of due process, (d) plausible failure in communication due to secret mail box, (e) malice as the motivating factor, and (f) disputed material facts in GWU's six false declarations led to **court's wrongful judgment** on the following federal questions:

1. petitioner's 4th Amendment right
2. petitioner's 14th Amendment right
3. petitioner's civil rights (false arrest, false light, false imprisonment and invasion of privacy) under 42 U.S.C. § 1983.

II. US Court of Appeals

In its July 31, 2008 ORDER (*see* Appendix B), the panel of three judges (Judge Ginsburg, Rogers, and Garland) granted appellees' summary

affirmance, and cited three cases in support of their decision: (1) Taxpayer Watchdog v. Stanley : On Merits of Parties' positions, (2) Faniel v. Cheasapeake et al : On arrest or imprisonment, and (3) Kitt v. Capital Concerts, Inc. : On invasion of privacy-false light.

Petitioner's Arguments:

The citations the panel referred to do not support the merit of their decision; rather, the citations present contradictory views that weaken the arguments in their decision. The panel did not provide remedy for the shortcomings District Court's decision because it neither

(a) addressed any of the issues raised by the petitioner (*See* "**Issues to be Raised**", ID # 1114858, Case No. 08-7047), nor

(b) provided answer to any of **Eight Issues** raised in the previous section on District Court's decision.

The Panel failed to observe District Court's NEGLIGENCE and FAILINGS in examining the record; this provides sufficient justification for granting the writ.

Panel's citations that weaken Panel's argument :

1. Taxpayer Watchdog v. Stanley

Though the Court of Appeal, summarily affirmed the District Court's summary judgment, yet it acknowledged that reversal of the summary judgment could be a possibility on the ground as captured in following from the citation:

"Agency's decision not to issue environmental impact statement for activity it claims has insignificant impact on environment may be reversed only if the decision is arbitrary or capricious..."

In the present case of Saha v. Lehman et al, the Court panel neglected to take into account following **Arbitrary or Capricious acts on the part of Appellees (respondents):**

1. ECE secretary Swanson's testimony (in GWU Hearing) established with absolute certainty that Appellant Saha was indeed instructed to go to class on Sept. 1st, 2005 to teach ECE-243(10). On the other hand, security police was instructed to remove Appellant Saha from the classroom.

2. GWU failed to establish that it communicated to Prof. Saha his suspension effective August 29, 2005 prior to starting his lecture on Sept. 1st, 2005.

3. GWU did not serve Bar Notice even at the time of false imprisonment on Sept 1st evening and carried out the perp walk on Sept. 2nd out of continued malice and vengeance that originated with Saha's 1996 whistle blowing.

4. VP Lehman's e-mail (*See* Exhibit 5, November 8, 2007 Response, Case 1:06-01493-RCL), confirms that even on Sept. 2nd, after all police actions had taken place, GWU administration was not sure whether Prof. Saha was communicated his suspension.

Further, Summary Affirmance was improper because disputed material facts and contested issues raised in Appellant's "Statement of Issues to be Raised" (ID No. 1114858) are yet to be addressed and settled. In addition, the Panel relied on the following flawed conclusion:

Flawed Conclusion of District Court: District Court concluded (Re. foot note 16 in Appendix C): "The relevant factor here is that defendants have sufficiently established that plaintiff was in fact suspended, and under the terms of that suspension, he was not to come to campus to teach or perform any University responsibilities."

Panel of the Court of Appeals failed to address whether District Court erred in relying on such flawed conclusion (based on disputed material facts) when there was

(a) no evidence that would establish the time line the letter was written so that suspension could be effective on August 29, 2005, and

(b) no evidence that would establish the proof of delivery of that letter (Quick messenger invoice is much less than proof of delivery) prior to Sept. 2nd, 2005.

Petitioner (Appellant) Saha contested the claim of GWU and presented material facts that established GWU did not communicate the

suspension though they could avail to any of the Five Easy options (*See* foot note 7).

Panel's Inappropriate Inference : In Taxpayer Watchdog v. Stanley , issuing no environmental impact statement by the Agency did not constitute any violation, whereas, in the present case, lack of notice along with Appellees' arbitrary and capricious acts constituted a direct violation of GWU Faculty Code (Article X[B][3]), and therefore, a breach of contract. Lack of notice of suspension was unlawful, and denial of civil rights in absence of proper notice was a constitutional violation.

2. Faniel v. Cheasapeake and Potomac Tel. Co. of Maryland

In this case, D. C. Court of Appeals held that "no detention of employee occurred" and there was no evidence that "employee yielded to constraint of threat , express or implied". In addition, "she did not negate her prior consent and convert herself into unwilling passenger on trip to her home to recover employer's equipment". Court of Appeals further concluded that there was no False Imprisonment upon defining it in multiple ways as follows :

"[5] False Imprisonment .....

"False Imprisonment" is a restraint by one person of the physical liberty of another without consent or legal justification."

Unlike Mrs. Faniel's, in the present case, on Sept. 1st, 2005, Appellant Saha's physical liberty of staying in the classroom and/or Gelman Library was restrained without Saha's consent and, in absence of notification of suspension and/or bar notice, it was done without any legal justification.

"[6] False Imprisonment .....

Essential elements of tort of false imprisonment are the detention or restraint of one against his will, within boundaries fixed by defendant, and the unlawfulness of the restraint."

On Sept. 1st, 2005 evening, in absence of notification of suspension and/or bar notice, Prof. Saha was lawfully in his classroom GEL-609. As a faculty member, he had the right to be in the classroom during 7:10pm-8:40pm. His right to freedom of movement inside the classroom was restrained against his will after uniformed police officers entered the room while he was delivering lecture on Communication Theory. His right to freedom of movement outside the classroom in the hallway, in the elevator, and in the lobby of Gelman library was taken away by uniformed police officers. Unlike Mrs. Faniel, Prof. Saha was imprisoned within the fixed walls of surroundings of uniformed special police officers till he was escorted out of the Library. In absence of notification of suspension and/or bar notice, all these restraints against his will were unlawful.

"[10] False Imprisonment .....

To constitute imprisonment for purpose of false imprisonment action, restraint of party's freedom of movement must have been total."

On Sept. 1st, 2005 evening, Prof. Saha's freedom of movement was totally restrained to the walls of police officers surrounding him till he was escorted out of the library. On Sept. 2nd morning, for almost forty minutes, Prof. Saha's freedom of movement was totally limited to his seating chair in his office surrounded by three police officers with his door wide open and a fourth officer waiting outside the door; thereafter during perp walk, the movement was only limited to hallway, elevator and parking garage as was guided by uniformed officers from front and back as they marched along with Saha in the middle till Saha was escorted out to public road.

Panel's Inappropriate Inference : In Faniel v. Cheasapeake and Potomac Tel. Co. of Maryland, Mrs. Faniel's freedom of movement was never restrained, and the interrogation and trip to her home was done lawfully and not against her will. Unlike Mrs. Faniel's, Appellant Saha's restraint was total, unlawful, and against his will.

Further, by not giving Prof. Saha any instruction on Sept. 1st evening (during his false imprisonment) about his bar status from campus, and perp walking him again on Sept.2nd morning in

front of known students, faculty & staff, (Saha argues that) Lehman administration clearly established its continued vengeance and malice for Saha's 1996 Whistle Blowing as a probable cause for putting Prof. Saha in false light and damage his professional reputation that he established over almost two decades[9]. Panel's inference to Mrs. Faniel's situation was quite inappropriate.

3. Kitt v. Capital Concerts, Inc.

Facts: After Mr. Kitt, a principal clarinetist of an orchestra, rejected the idea of appearing in a beauty shot, Capital Concerts filmed the shot with an actor. Mr. Kitt took an offense at the company's use of an

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[9] Prof. Saha established his professional reputation within the GW community over a period of service of Nineteen years. He taught not only at the Foggy Bottom campus, but also in NASA, Virginia campus, as well as on GW TV for many years. He is a former Chairman of Washington D.C.-Northern Virginia Chapter of IEEE Information Theory Society. He has many acquaintances in Washington community. Even on Sept. 1st, 2005, on his way to his classroom Gelman-609 where he was arrested, a former student who was working for Gelman Library, greeted him at the entrance of the Gelman Library and chatted for a few minutes. For many years Prof. Saha served as Academic Advisor of more than one hundred undergraduate students at any given time. Some of these undergraduate students are still around as graduate students or employee of GWU. In spite of such ties to GW community, on Sept. 1st and Sept. 2nd, 2005, the respondents acted recklessly in total disregard to the rights and reputation of Prof. Saha.

actor to portray a clarinetist and brought a lawsuit, an element of which is Invasion of Privacy. The Court of Appeals, Reid, J., held that the musician did not have valid invasion of privacy-false light claim. The Court rejected the allegation of invasion of privacy because of several factors as quoted below:

"The actor, who was dressed in a top hat and a tuxedo, neither physically resembled Mr. Kitt nor played the clarinet visually in the way he did." (p.4)

*"...unlike in other cases, there was [*860] no identification of the actor, either as Mr. Kitt, or as the principal clarinetist ." (p.6)*

"Nr. Kitt cannot establish a prima facie false light claim because he cannot show that the portrayal by the actor was "of and concerning the plaintiff" and highly offensive to any reasonable person." Although Mr. Kitt contends that Capital Concerts placed him in a false light by hiring an actor to impersonate him "playing" the clarinet, he agrees that the actor neither resembled him nor "played" the way that he would. Certainly, his peers in the music industry would not have mistaken the actor for him." (p.6)

The Court further argued (p.6):

"*An invasion of privacy-false light claim requires a showing of : (1) Publicity (2) about a false statement, representation or imputation (3) understood to be of and concerning the plaintiff, and (4) which places the*

plaintiff in a false light that would be offensive to a reasonable person."

In the present case of Prof. Saha, factual summary established the following :

(1) Publicity

On Sept. 1st, 2005:

- "Seizure" of Prof. Saha in his classroom in front of students,
- Officers' parading Saha in the hallway and elevator of a crowded library
- Use of four/five uniformed officers to escort Saha out of the crowded lobby of Gelman library

On Sept. 2nd, 2005:

- Confining him in his own office with doors open for forty minutes while surrounded and interrogated by three police officers inside
- Allowing reasonably loud conversations by a fourth officer from open hallway outside his office door
- Interrogating, confiscating his office key, and parading him surrounded by uniformed officers in the presence of known students, faculty, and staff of his own department where he had been teaching for almost two decades

(2) A false representation or imputation & (4) false light that would be offensive to a reasonable person

- On Sept.1st, 2005 evening GWU improperly publicized facts about petitioner which placed petitioner in a false light by attributing to his conduct characteristics that were false and deserving of arrest and being escorted out of the classroom by special police officers employed by GWU.
- On Sept. 2nd, 2005 respondents acted more recklessly in putting petitioner again in false light by confining him in his own office with doors open for forty minutes while surrounded and interrogated by three police officers inside, and then parading him surrounded by uniformed officers in the presence of known students, faculty, staff of his own department.
- Respondents knew that the facts they publicized or caused to be publicized about the petitioner were false, or printed with reckless disregard for truth to those facts.

(3) Understood to be of concerning Saha

The record is very clear that there was only one Debabrata Saha around whom all the events took place. So there was no ambiguity.

Panel's Inappropriate Inference : The above analyses clearly establish that the cited set of four criterion for litmus test of invasion of privacy-false light are convincingly fulfilled in the Saha case. Therefore, panel's inference to Kitt v. Capital Concerts, Inc. was inappropriate.

REASONS FOR GRANTING WRIT

Legal principles are supposed to reflect moral principles of the society. Fourth and fourteenth amendments are mere moral principles which, petitioner believes, can be derived from even first paragraph of U.S. Constitution. Furthermore, since pre-historic ages of Hindu mythology or more modern school of thoughts due to Socrates-Plato-Aristotle, academia has been the guardian of moral principles of the society. The violations of fourth and fourteenth amendments on the part of an academic institution, therefore, is a serious matter and need special attention because they have far reaching impact on American Higher Education. This petition stems from the fact that U.S. Court of Appeals, D.C. Circuit did not provide any remedy for District Court's NEGLIGENCE and FAILINGS in examining the record and contamination of opinion by influence not substantiated by evidence.

A. Constitutional Violations as Vengeance in initiating tenure revocation

This case addresses specific federal questions that have exceptional importance in the governance of university teaching profession. Petitioner is a tenured professor of GWU and has been teaching in GWU since 1986. In 1997 President Trachtenberg of GWU labeled the petitioner as a whistle blower for his role on matters of academic integrity; since then respondent Lehman, in the capacity of Vice President, suspended petitioner four times in eight years. In the past, each time, after investigation,

petitioner has been exonerated and reinstated. But the last suspension in the fall of 2005 and associated violations of constitutional rights marked the beginning of the first attempt of tenure revocation in the 187 years history of GWU; the university never before made any attempt to revoke anyone's tenure.

The notion of tenure is an integral part of American higher education. American Association of University Professors (AAUP) in its 1940 Statement of Principles emphasizes *"Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole....Academic freedom is essential to these purposes ...Tenure is a means to certain ends; specifically: (1) freedom of teaching and research....(2) a sufficient degree of economic security....; hence, tenure, are indispensible to the success of an institution in fulfilling its obligations to its students and to the society."*

Also, tenure's *"real concern is with arbitrary or retaliatory dismissal based on administrator's or trustee's distaste for the content of a professor's teaching or research, or even for positions taken.....It is designed to foster our society's interest in the unfettered progress of research and learning by protecting professor's freedom of inquiry and instruction"* Re. Browzin v. Catholic University, 527F.2d 843 (D.C. Cir 1975).

Petitioner's 1996 whistle blowing is the root cause for administration's distaste for the petitioner. Administration's malice and vengeance, the very elements against which tenure is designed to provide protection, led to planned violations of rights as prelude to initiation of petitioner's tenure revocation; these violations are summed up in following set.

Set of Undisputed Material Facts:

1. **Suspension without due process**
2. **Entrapment**
3. **Lack of notice or warrant in false arrest**

Subsequent to these capricious acts, respondents' attempt to revoke petitioner's tenure strikes the very foundation of higher education, an integral security of which lies in the notion of tenure. Therefore, the constitutional violations of this case have exceptional importance in American higher education. Apart from this, the other reasons for granting this writ are a number of conflicts and inconsistencies with the decision on federal questions made at this Court and at other Court of Appeals.

B. Conflicts and inconsistencies with decisions at this and other Courts

The panel of the Court of Appeals (D.C. Circuit) failed to weigh the importance of due process in suspension and failure to provide adequate and effective notice of suspension that is required under University procedures. Lack of notice was unlawful and resulted in breach of contract as well as constitutional violations including violation of fourth and fourteenth amendment. Following is a set of four conflicts and inconsistencies that call for granting the writ.

1. Violation of 4th Amendment:

In Belcher v. Norton (06-3174), U.S.C.A., Seventh Circuit reversed[10] in part District Court's judgment on the ground of violation of 4th Amendment. On the issue of Arrest, the Appeal Court argued as follows:

"[1] Arrest ...In order to establish a violation of the Fourth Amendment, the plaintiffs must establish that officer's conduct constituted a "seizure" and the seizure was unreasonable. U.S.C.A. Const. Amend. 4."

"[2] Arrest .....In order to establish that an officer's actions constituted a "seizure," as required to establish a violation of the Fourth Amendment, the plaintiffs must demonstrate, from all the circumstances surrounding the incident that a reasonable person in such a situation would have believed that he was not free to leave. U.S.C.A. Const. Amend. 4."

In the present case, on Sept.1st, 2005, Prof. Saha was removed from his classroom and then paraded through the long hallway, elevator, and crowded lobby of library surrounded by four/five uniformed officers. Prof. Saha's freedom of movement was totally restrained to the walls of police officers surrounding him till he was escorted out of the library. To any reasonable person who watched the parade, it was very obvious that Prof. Saha was not free to leave at his own will and his freedom of movement was restricted against his will; this constituted a "seizure", which, in absence of any proper notice, was unlawful and defamatory. The "seizure" was repeated on Sept. 2nd morning. Thus,

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[10] It is a conflict with the decision made in Saha v. Lehman et al. made in the Court of Appeals, D.C. Circuit.

petitioner Saha's 4th Amendment rights were violated; this argument is further supported and strengthened in the decisions of the following cases:

1. Soldal v. Cook County, et al., No. 91-6516, Supreme Court of the United States (on "seizure" within 4th Amendment)
2. Fuerschbach v. Southwest Airlines Co., No. 04-2117, United States Court of Appeals, Tenth Circuit (on importance of warrant and probable cause in "seizure" within Fourth Amendment)
3. Buss v. Quigg, No. 02-4053, United States Court of Appeals, Third Circuit (on defending 4th and 14th Amendment coupled with legal significance of unreasonable seizure under 42 U.S.C.A.-1983)
4. Lau v. Meddaugh, No. 99-9363, United States Court of Appeals, Second Circuit (on importance of notice in writing)

2. Violation of 14th Amendment:

In the Supreme Court case of Baker v. McCollan, 78-752, the Court decided that plaintiff failed to allege civil rights violation since plaintiff's detention was pursuant to a warrant conforming to constitutional law cited as follows[11]:

"[9] Constitutional Law .....
The Fourteenth Amendment does not protect against all deprivation of liberty but protects only against

[11] This argument is in conflict with the decision made in Saha v. Lehman et al. made in the Court of Appeals, D.C. Circuit.

deprivation of liberty accomplished without the process of law. U.S.C.A. Const. Amend. 14."

In the present case, Prof. Saha's suspension and barring from campus were procured through a fradulent mechanism that deprived Saha the due process. Appellee VP Lehman's Aug. 29, 2005 suspension of Prof. Saha was critically dependent on Lehman's June 27 & July 26, 2005 Letters which were written when Saha was not on GW's payroll and was absent from campus. VP Lehman's confession about those two letters proved that VP Lehman deprived Saha the due process. Also, on Sept. 1st, 2005 when Saha was taken into the custody of police and was deprived of liberty and free will of movement, the officer failed to present any written confirmation of suspension or any order barring from campus. Hence, Appellant Saha's 14th Amendment rights were violated.

3. Conflict with a decision made in another Court of Appeal and endorsed by the Supreme Court

In Walters v. Churchill (No. 92-1450), respondent Churchill after being fired from nursing job sued under 42 U.S.C.-1983. District Court awarded summary judgment against Churchill. Churchill appealed and Court of Appeals, seventh circuit, reversed the judgment and held that employer and supervisor were not entitled to summary judgment in wrongful termination action. Employee Churchill produced enough evidence to create a material issue of disputed fact about employer's actual motivation for the job termination.

In the Supreme Court decision, Justice O'Connor, joined by the Chief Justice, Justice Souter, and Justice Ginsburg, in their conclusion, wrote:

"Nonetheless, the District Court erred in granting petitioners summary judgment, since Churchill has produced enough evidence to create a material issue of disputed fact about whether she was actually fired because of disruptive statements, or because of nondisruptive statements ***663*** *about cross-training, or because of other statements she may have made earlier. If either of the latter is so, the court will have to determine whether the statements in question were protected speech. Pp.1890-1891."*

In the present case, tenured professor Saha's 2005 suspension that ultimately led to the attempt of revocation of his tenure was wrongful because VP Lehman's confession in GWU's Senate Hearing established that he was disingenuous in writing Aug. 29, 2005 suspension letter. Saha's "Statement of Issues to be Raised (ID No. 1114858, No. 08-7047, D.C. Cir.)" and Saha's 382 pages response (Docket 32, 11/08/2007, 1:06-cv-01493-RCL) to GWU's motion for summary judgment presented overwhelming disputed material facts; it also established Lehman's malice and vengeance for Saha's 1996 whistle blowing as the motivating factor for suspending Saha four times in eight years. Petitioner's arguments made earlier (in section C. Proceedings Below) also highlighted some of disputed material facts.

The decision of the Court of Appeals, D.C. Circuit, in this case of Saha v. Lehman et al, is in direct conflict with the decision in Walters v. Churchill, made in the Seventh Circuit Court of Appeals that was later endorsed by the Supreme Court.

4. **Lack of Uniformity** : On a similar lack of notice issue, the Court of Appeals, 683 A.2d 128 , reversed and remanded a summary judgment that was earlier granted to G.W.U., and on remand granted in favor of faculty member Kakaes (Re. 790 A.2d 581).

CONCLUSIONS

For the foregoing reasons, this Court should grant petition for writ of certiorari.

Respectfully submitted,

Debabrata Saha (pro se)
9409 Fairpine Lane
Great Falls, VA 22066
(703) 757-5418

Date: December 3, 2008

Appendix A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-7047 September Term 2008
1:06-cv-01493
Filed On : September 10, 2008

Debabrata Saha, Professor, Ph.D,
Appellant.
v.
Donald Lehman, Individually and
In his capacity as Executive Vice
President for Academic Affairs of
The George Washington University,
et al.,
Appellees

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Randolph, Rogers, Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT :
Mark J. Langer, Clerk
BY: /s/
Michael C. McGrail
Deputy Clerk/LD

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 08-7047

September Term 2007
1:06-cv-01493
Filed On : July 31, 2008

Debabrata Saha, Professor, Ph.D,
Appellant.
v.
Donald Lehman, Individually and
In his capacity as Executive Vice
President for Academic Affairs of
The George Washington University,
et al.,
Appelless

BEFORE : Ginsburg, Rogers, and Garland, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, and the motion to hold abeyance, styled "procedural motion that may affect case calendaring," the opposition thereto and the reply, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions **are so clear as to warrant summary action.** See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d

294, 297 (D.C.Cir.1987) (per curiam). With respect to his claim for false arrest and imprisonment, appellant has not shown appellees' actions constituted arrest or imprisonment, or that appellees' actions were unlawful. See Faniel v. Chesapeake and Potomac Tel.Co.of Maryland, 404 A.2d 147, 150 (D.C. 1979). Because appellant has failed to demonstrate appellees made false statements about him, the district court correctly granted summary judgment for the appellees as to the claim for invasion of privacy-false light. See Kitt v. Capital Concerts, Inc.,742 A.2d 856, 859 (D.C. 1999). Absent evidence of a violation of appellant's rights under the Constitution of Law, the district court properly dismissed appellant's claim under 42 U.S.C. §1983. Last, appellant provides no reason to conclude the statute of limitations governing breach of contract actions under the law of the District of Columbia governs George Washington University tenure revocation proceedings. It is

FURTHER ORDERED that the motion to hold in abeyance be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C.Cir. Rule 41.

Per Curiam

537 F.Supp.2d 122
Saha v. Lehman
D.D.C. 2008

United States District Court, District of Columbia
Professor Debabrata **SAHA**, Ph.D., Plaintiff
v.
Donald **LEHMAN**, et al., Defendants
Civil Action No.06-01493 (RCL)

March 12, 2008

MEMORANDUM OPINION[12]

ROYCE C. LAMBERTH, District Judge

This matter comes before the Court on defendants' motion [25] for summary judgment. Upon consideration of defendants' motion, the opposition and reply thereto, the record herein, and the applicable law, the motion shall be GRANTED.

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[12] This memorandum opinion dated March 12, 2008 is reported at **537 F. Supp.2d 122** with the following Background and Holdings.

Background: Former professor brought action against university and officials, stemming from his suspension and removal from campus. Defendants moved for summary judgment.

Holdings : The District Court, Royce C. Lamberth, J. held that :
(1) professor was not deprived of civil rights;
(2) professor was not actually detained;
(3) there was no publicity of events at issue; and
(4)statute of limitations governing contract claims was inapplicable.
Motion Granted.

I. BACKGROUND

Pro se plaintiff Debabrata Saha is a resident of Virginia and was formerly employed as a tenured Associate Professor in the Department of Electrical and Computer Engineering ("Department") at George Washington University ("University"). Defendant Donald Lehman ("Lehman") is the Executive Vice President for Academic Affairs of the University and defendant Timothy Tong is Dean of its School of Engineering & Applied Science ("SEAS"). Defendant George Washington University has its principal place of business in the District of Columbia. The facts giving rise to this matter stem largely from the events of September 1 and 2, 2005, when plaintiff was escorted from a classroom and from his office because he had been suspended.[13] That suspension represented the fourth time in eight years that plaintiff *124 had been suspended. (see Defs.' Mem. Supp. Summ. J.1.) The University announced the suspension in a letter to plaintiff dated August 29, 2005. That letter informed plaintiff that his classes for the Fall 2005 semester had been reassigned and instructed him not to come to the University's campus to teach or perform any university

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[13] Plaintiff contends that the background facts of his strained relationship with defendants actually date back to 1996 involving another dispute between plaintiff and the University over concerns plaintiff raised about the University's doctoral program qualifying exam. Since the facts involving that dispute are not directly relevant to plaintiff's claims in the instant matter and for the sake of brevity, the factual background provided here will be limited to the facts surrounding plaintiff's August/September 2005 suspension and physical banishment from the University.

responsibilities. (*see id.* Ex. A, Letter from Donald R. Lehman to Debabrata Saha (Aug. 29, 2005).) The letter further informed plaintiff that Lehman intended to initiate tenure revocation proceedings against plaintiff in the very near future. (*see id.*) According to defendants, the letter was sent to plaintiff by regular mail, certified mail, by placing a copy under the door of plaintiff's office in the Department, and by hand via same-day courier service to plaintiff's residence[14]. (*see id. at 2.*) Based on the Department's prior history of difficulties involving plaintiff, defendant Tong arranged for plain clothes security officers to be present outside classrooms of the classes originally assigned to plaintiff in case plaintiff appeared for class despite his suspension[15]. (*see id.*)

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[14] Plaintiff apparently had a long track record of denying that he received any written communication from the University. During his tenure revocation hearing, plaintiff gave the following testimony: "Q:...is it basically your testimony that you have failed to receive any communications from the University since 1999 ? THE WITNESS : Not '99, I would say '97." (Defs. Mem. Supp. Summ. J. 1-2, n.1 (quoting April 3, 2006 Hearing Tr. 234:10-14).) Defendant Tong testified that after plaintiff was suspended, when he asked plaintiff how he could communicate with him, plaintiff "gave [Tong] his home address but immediately said that "Don't send me anything. It will get lost." Then [Tong] asked for his phone number. He gave [Tong] his phone number and immediately said, "Don't call me.' " (*id.* (quoting March 6, 2006 Hearing Tr. 439: 1-16),)

[15] Defendant Tong's precautions were not unfounded as this was not the first time plaintiff showed up to teach class despite having been suspended. In 1997, plaintiff arrived to teach a class while under suspension and as here, was escorted from the classroom by University security officers, (Pl.'s Opp'n 38,) Moreover, defendants assert that plaintiff "had a long

When plaintiff appeared in a classroom and began to teach ECE-243 on the evening of September 1, a University security officer advised plaintiff that he was not permitted to teach any classes and asked him to leave the classroom. At which time, plaintiff was escorted from the building by University security officers without incident. The following morning, plaintiff appeared in his Department office again in violation of his suspension. University security officers entered plaintiff's office, informed plaintiff that he was prohibited from being on campus, and again escorted him out of the building without incident. Plaintiff claims that the August 29, 2005 suspension was never communicated to him. (*see* Pl.'s Opp'n 17.) He further claims that he relied on information posted on the Department's bulletin board indicating that he was the professor assigned

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history of difficult and sometimes aggressive behavior with the SEAS faculty and staff." (Defs.' Mem. Supp. Summ. J. 2.) Defendants further assert that "for almost ten years, Saha had consistently failed to communicate with his colleagues, participate in faculty meetings, and respond to various Chairs of his Department."(*id.*)

to teach ECE-243 beginning September 1. [16] (*see id.*) Plaintiff filed the instant suit *125 on August 24, 2006, and filed a First Amended Complaint on January 5, 2007. The First Amended Complaint seeks compensatory and punitive damages for violation of 42 U.S.C. §1983, false arrest and imprisonment, invasion of privacy for false light, and a declaratory judgment. (*See* Am. Compl.)

Defendants fited a motion for summary judgment on all counts of the First Amended Complaint on August 3, 2007, which was followed by plaintiff's opposition on November 8, 2007, and the reply thereto on December 5, 2007.

II. ANALYSIS

A. Legal Standard

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper when the evidence in the record demonstrates that there are no disputed issues of material fact and that the moving party is

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[16] Plaintiff places great significance on his contention that the University failed to communicate the suspension to him. Defendants, however, have submitted evidence in the form of evidence in the form of affidavits and exhibits sufficient to establish their many attempts to communicate plaintiff's suspension. (*see* Defs.' Mem. Supp. Summ.J., Ex. B.; Quick Messenger Service invoice; Lehman Aff. ¶ 6; Little Aff. ¶ 4; Walston Aff. ¶ 4.) In any event, whether plaintiff actually received the suspension letter is not an issue presently before the Court. As such, this Court draws no conclusion on that issue. The relevant factor here is that defendants have sufficiently established that plaintiff was in fact suspended, and under the terms of that suspension, he was not to come to campus to teach or perform any University responsibilities.

entitled to judgment on the undisputed facts as a matter of law. FED.R.CIV.P. 56(c). A genuine issue of material fact exists if the evidence, when viewed in light most favorable to the nonmoving party, "is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248. 106 S.Ct 2505, 91 L.Ed.2d 202 (1986). However, a party must provide more than "a scintilla of evidence" in support of its position; the quantum of evidence must be such that a jury could reasonably find for the moving party. *Id* at 252. 106 S. Ct. 2505. The burden is on the movant to make the initial showing of the absence of a genuine issue of material fact in dispute. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The moving party is then entitled to a judgment as a matter of law if the non-moving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Id* at 322, 106 S.Ct. 2548.

B. Count I : Violation of §1983

Count I of plaintiff's First Amended Complaint alleges that defendants, under color of statute, ordinance, regulation, custom, or usage of the **District of Columbia** deprived plaintiff of his rights, privileges, or immunities secured by the Constitution and laws of the **District of Columbia** in violation of 42 U.S.C. § 1983. (*See* Am. Compl. ¶ 21.) To state a claim under § 1983, plaintiff must allege both (1) that he was deprived of a right secured by the Constitution or laws of the United States, and (2) that the defendant acted "under color of" the law of a state, territory or the **District of Columbia**. Hoai v.

Vo. 935 F.2d 308. 312 (D.C.Cir. 1991) (citing Adickes v. S.H. Kress & Co. 198 U.S. 144,150, 90 S.Ct. 1598, 26 L.Ed.2d 142 (1970)). Defendants challenge whether plaintiff can establish the first of these elements.

[1] Plaintiff claims that defendants deprived him of his right to be in the classroom, to continue delivering his lecture, to move freely inside and outside of the classroom and on the campus, and the right to preserve his reputation and be portrayed as a law abiding person. (*See* Pl.'s Opp'n 17.) Plaintiff's § 1983 claim is clearly tied to his claims for false arrest and imprisonment (Count II) and invasion of privacy for false light (Count III). As to the claim for false arrest and imprisonment, the elements of a constitutional claim false *126 arrest are substantially identical to the elements of a common law false arrest claim such that the "constitutional claim can not stand if the common law claim fails for lack of sufficient evidence." *Weishapl v.Sowers.* 771 A.2d 1014, 1023 (D.C. 2001)(quotation omitted). Regarding plaintiff's invasion of privacy for false light claim, where plaintiff has failed to show "an unreasonable and serious interference with protected interests," *Jackson v. **District of Columbia,*** 412 A.2d 948, 954 (D.C. 1980)(citation omitted), he has neither a constitutional nor a tort claim. For reasons stated in the sections below, this Court finds that plaintiff's claims on Counts II and III are wholly without merit. As such, plaintiff has failed to establish that he was deprived of any right secured by the Constitution or the laws of the United States and his claim under § 1983 therefore fails. Summary judgment as to Count I of plaintiff's First Amended Complaint will therefore be GRANTED.

C. Count II : False Arrest and Imprisonment

[2][3] In Count II of his First Amended Complaint, plaintiff alleges that "[d]efendants caused the false arrest and imprisonment of Professor Saha where he was detained and restrained from teaching his class and was escorted from the classroom and then from the building where he was teaching." (Am. Compl. ¶ 24.) The elements of the tort of false arrest and false imprisonment are : (1) the detention or restraint of one against his will within boundaries fixed by the defendant, and (2) the unlawfulness of the restraint. Edwards v. Okie Dokie, Inc.,473 F.Supp.2d 31, 44 (D.D.C. 2007) (citing *Koroma v. United States,* 628 F.Supp. 949, 952 (D.D.C. 1986)). Liability is incurred for the procuring of a false arrest and imprisonment if by acts or words, one directs, requests, invites or encourages the unlawful detention of another. *Id.* (citing *Smith v. Dist of Columbia,* 399 A.2d 211, 218 (D.C. 1979)).

[4] Defendants assert that they are entitled to summary judgment on Count II because plaintiff has failed to establish that he was detained. As defendants correctly pointed out, plaintiff does not claim that he was required to *stay* on the premises instead, his chief complaint is that he was required to leave. Drawing all justifiable inferences in the plaintiff's favor and accepting plaintiff's evidence as true, even if this Court were to construe "restrained from teaching his class" and being "escorted from the classroom and then from the building" as an arrest or detention, plaintiff has not shown that an unlawful restraint occurred. Under the terms of the suspension, plaintiff was prohibited from entering

the University's premises. Plaintiff has not established that the University acted unlawfully by merely asking him to leave the premises and escorting him away. Moreover, affidavits by University security officers involved in the events giving rise to plaintiff's claim state that plaintiff was not handcuffed or touched in any way. (*See* Archie Aff. ¶7; Williams Aff. ¶7.) Accordingly, plaintiff's claim of false arrest and false imprisonment fails for failure to establish that an unlawful detention occurred.

Alternatively, where plaintiff cannot show that he has been actually detained, plaintiff must show a "reasonable apprehension of present confinement" based upon "the actions or words of the defendant" and not the "subjective state of mind of the plaintiff." *Dent v. May Dep't Stores Co.* 459 A.2d 1042, 1044 (D.C. 1982)(citation omitted) Here, defendants argue that plaintiff was never arrested, nor was he ever threatened with arrest for refusal to cooperate. (*See* Defs' Reply Br.4.) Plaintiff claims, however, that he acted *127 upon his belief that if he refused to leave the building, University security officers would have called the Metropolitan Police Department ("MPD") and transferred him to police custody[17] (*See* Pl's Opp'n 18.) Plaintiff's belief was based on his subjective state of mind rather than on actual actions and words of the officers. Plaintiff has therefore

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[17] Plaintiff's belief is presented on an April 1, 2004 article referenced in his opposition brief. The article is from the University student newspaper and it describes 11 protesting students who were arrested by the MPD for failing to comply with a University order to leave the premises.(*See* Pl's Opp'n 18,20)

failed to demonstrate a reasonable apprehension of present confinement. In light of these facts, defendants' motion for summary judgment as to Count II shall be granted.

D. Count III: Invasion of Privacy for False Light

[5][6][7] In Count III, plaintiff alleges that "[on September 1, 2005, defendants improperly publicized facts about plaintiff which placed plaintiff in a false light by attributing to his conduct characteristics which were false and deserving of arrest and being escorted out of the classroom." (Am. Compl. ¶27.) Plaintiff further alleges that defendants "did so again on September 2, 2005, when they had Professor Saha escorted out of his office." (*id*) In order to prevail on a claim for invasion of privacy for false light, plaintiff must show: (1)publicity (2)about a false statement, representation or imputation (3) understood to be of and concerning the plaintiff, and (4) which places the plaintiff in a false light that would be highly offensive to a reasonable person. Lohrenz v. Donnelly, 223 F.Supp.2d 25, 40 (D.D.C.2002) (Lamberth, J.) (citing Kitt v. Capital Concerts, *Inc.*, 742 A.2d 856, 859 (D.C.1999)). Having examined the record in this case, plaintiff's false light claim is flatly contradicted by the evidence. First, there was no publicity of the events surrounding either plaintiff's suspension or his being asked to leave campus. Publicity, in the false light context, "means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as *substantially certain to become one of public knowledge." Steinbbuch v. Cutler.* 463 F.Supp.2d 1, 3 (D.D.C. 2006) (emphasis in original). Plaintiff has made absolutely no

allegation that the events were communicated to or became known to the public. Second, plaintiff has failed to demonstrate how defendants' conduct constitutes a false statement, representation or imputation. Defendants simply arranged for plaintiff to be escorted from premises where he was not supposed to be. As defendants correctly state, the only plausible implications to be had from witnessing plaintiff being escorted from the premises is that he was not permitted to be there. That implication was true as plaintiff had been suspended and barred from the campus just days earlier. Because plaintiff has failed to prove these two elements of his false light claim, there is no need for the court to discuss the remaining elements required for the court to discuss the remaining elements required for invasion of privacy for false light. Defendants' motion for summary judgment as to Count III shall be GRANTED.

E. Declaratory Judgment

[8] In Count IV, plaintiff seeks a declaratory judgment that the University may not rely on time-barred events occurring more than three years ago in making the decision whether to revoke plaintiff's tenure based on "persistent neglect of professional responsibilities."[18] (*See* Am. Compl. ¶35.) In essence, plaintiff argues that the **District of Columbia's** three-year *128 statute of limitations on breach of contract claims applies to grievances arising under the

[18] As a preliminary matter, the Court notes that plaintiff filed Count IV as part of his First Amended Complaint filed January 5, 2007, before the University actually revoked his tenure on March 1st, 2007.

University's Faculty Handbook. (*See* Am. Compl. ¶ 32 (citing *Kyriakopoulos v. George Washington University,* 866 F.2d 438, 442 (D.D.Cir.1989)).) Plaintiff's argument is entirely without merit. The tenure revocation proceedings conducted against plaintiff were governed by the University's Faculty Code. Nothing in *Kyriakopoulos* indicates that the statute of limitations applies to a University's disciplinary process. Instead, that case merely says that the three-year statute of limitations applies to lawsuits filed against the University for breach of contract. *See Kyriakopoulos* 866 F.2d at 442-43 (rejecting appellant's assertion that the University's grievance procedures tolls the statute of limitations for breach of contract claims). Thus, the three-year statute of limitations is wholly inapplicable to the period of alleged misconduct considered during plaintiff's tenure revocation proceedings.[19] Plaintiff's request that this Court enter a declaratory judgment on this issue is therefore rejected and defendants' motion for summary judgment on Count IV will be GRANTED.

III. CONCLUSION

For the foregoing reasons, defendants' motion for summary judgment on all counts of plaintiff's First Amended Complaint will be GRANTED.

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[19] In any event, the July 24, 2006 decision issued by plaintiff's revocation hearing panel states that even if its decision was limited to a three-year limitations period, plaintiff neglected his professional responsibilities throughout this period and this tenure revocation would still be warranted. (*See* Am. Compl., Ex.B. at 10.)

A separate order shall issue this date.

SO ORDERED
D.D.C., 2008
Saha v. Lehman
537 F.Supp.2d 122, 230 Ed. Law Rep. 277

Appendix D

The Colleagues
Dept. of Elec. Engineering and Comp. Science
The George Washington University

May 15, 1996

Dear Colleagues :

I assume that all of you are now familiar with the allegation of "practice of favoritism" against some members of faculty and administrators in this department. You received a memorandum from Prof. Zaghloul regarding my allegations. In plain English, that memorandum is full of lies; literally, lie starts with the first paragraph, and each of the four paragraphs of substance includes distortion of facts. I chose not to respond to that because I promised so to the higher administration involved in the investigation.

At this point, I would like to inform you that the issues are yet to be resolved by the administration. But I would like to reconfirm that I do have definite proof that Prof. Pickholtz knowingly and consciously allowed a doctoral student taking the Doctoral Qualifying Exam four times in a row. But the department continues to deny this and other allegations. Evidence shows that Prof. Pickholtz approved the fourth attempt without the approval of anybody but himself. Furthermore, his own hand-written note and e-mails will confirm that he even pleaded on behalf of the student for a fifth attempt.

In the mean time, I have been informed by the department that the students have been congratulated on passing the Qualifying Exam. What an irony!!, the students are allowed to pass the exam

by a vote of Democracy, but what they wrote in the exam were not looked at!! It reminds me of a saying that human race has not come up with a system that works better than democracy; but democracy has its own pitfalls. We just witnessed such a pitfall; it is caused by the lack of patience on the part of administrators and eagerness of the administrators to save the face of a faculty member who doesn't have the moral courage to apologize for his mistaken past. As Lowell said, Democ'acy gives every man the right to be his own oppressor. In this case, indeed the democracy within the EECS department oppressed its own virtue and its own wisdom.

Sincerely,

Debabrata Saha
Department of EECS
School of Engineering and Applied Science
The George Washington University

Appendix E

Professor Stephen Joel Trachtenberg
President, The George Washington University
Rice Hall, 2121 Eye Street, N.W.
Washington, D.C. 20052

July 23, 1997

Dear Professor Trachtenberg:

Following the despicable "police incident inside my classroom" carried out by Dr. Donald Lehman on February 6 and subsequent suspension effective May 1st, I had a meeting with you on May 12 in last Spring semester.

In that meeting, which I consider to be a very cordial one, you suggested certain specifics to resolve the situation. Among other statements, what struck me most are:".....Prof. Saha, you are a man of principle; you blew the whistle (about the wrong doings in EECS Dept.);.....; you have done a reasonably good job in pursuing these matters; it is now the responsibility of the administration to address the issues; ....; the administration should have sent you a letter thanking you for your role; ...you have been successful in bringing the issues (of corruptions) to the attention of the administration; now it is the responsibility of the administration; pursuing it any further is not your job; you should not be a vigilante".

You disagreed with the conditions imposed by Dr. Lehman in his April 30, letter. You thought the condition of meeting the Chairperson and the faculty

of EECS, against whom I brought allegations, was inappropriate and, therefore, you repeatedly suggested "to get the Fall assignment of courses directly through the office of Prof. Mazzuchi" and "work with Prof. Mazzuchi for next two years".

Following your suggestion, I immediately arranged a meeting with Prof. Mazzuchi on May 20, and have been working with Prof. Mazzuchi to start the Fall semester without any hitch. I believe Prof. Mazzuchi has been sincere with me. But the EECS Chairperson has been a definite "Road Block" against materializing the Fall assignment of courses. Time is running out. I would appreciate your feedback on this matter at your earliest.

Sincerely,

Debabrata Saha
New Address :
9409 Fairpine Lane
Great Falls, VA 22066
(703) 757-5418

Enclosures : 1. May 20, 1997 letter to Prof. Mazzuchi
2. June 6, 1997 letter to Prof. Mazzuchi

Appendix F[20]

Still Teaching is noble in America!

by

Debabrata Saha
The George Washington University
801 22nd Street, N.W.
Washington, D.C. 20052
U.S.A.
November 14, 2006

[20] This is the Preface part of Exhibit 20 of November 8, 2007 Response, 1:06-01493 (RCL), U.S. District Court

Preface

It all started with a tear in a mild tempered student who spoke with a choked voice. This student was not treated the same way as some other privileged students, and had to leave George Washington doctoral program. But his tear took me above a threshold and is partly responsible for the ten years old ordeal over which we saw in 1996 an academic vandalism by Linda Salamon, a Vice President for Academic Affairs of our society and the revelation of a dirty conspiracy to cover up that vandalism by another Vice President of Academic Affairs, Donald R. Lehman. In between, so many deans and chairpersons demonstrated that in our society still loyalties to religion, color and race are so dominant that the truth apparently looses its right to be almighty and unique. But all of them definitely misunderstood the strength of the truth. The strength of the truth lies in its unique existence. The truth is the "Academic Vandalism" that was committed by the George Washington University (GWU) administration in the capitol of the nation under the nose of Bush and Clinton Presidency. It is the integrity of the academic process and the issue of fairness that called for the stand I had to take in 1996; now, ten years later, I feel it is important that I share the experience so that the students and the teachers of American Universities get a chance to learn from it and contribute their own in strengthening the pillars of academia on which the society stands. Still teaching is a noble profession in America !

Following the "Academic Vandalism" came the announcement of "whistle blowing" by the President of GWU, Stephen Joel Trachtenberg, and the process of harassment and retaliation just began. In less than one decade Prof. Saha was suspended four times and his resources for research, teaching, and normal functioning of day to day life were withdrawn slowly but in very systematic way. Indeed it is best described as an intellectual execution of oppression of minds, tenacity and will power of retaliated faculty member(s).

On November 9, 2006 The GW Hatchet, an independent newspaper of the George Washington Community, ran a story and brought the events of 1996 into public arena for the first time. But the article failed to give a complete picture. The moral side of the events and the issues of academic integrity and academic fairness for which I stood for and for which President Trachtenberg called it a Whistle Blowing are not even touched upon in the story. As a former President of a Student Union of my college days I know the students and the academic community always appreciate a complete picture that gives the whole truth. The objective here in this paper on social enigma is to give a clear and truthful picture of the decade long events. The devil is in the details of the events. These events are representations of the society we live in. Ten years ago, three decades after the civil right movements in this society, I wouldn't believe in my wildest dream that such pandemonium of ostracism, retaliation and oppression can take place today in the capitol of the nation within a few blocks from the White House. Ten years back I simply couldn't imagine that, in a city which celebrates so many monuments of civil

liberty and holocaust archives, I needed to expect such extreme hostility and harassment even after the President of the University declared me as Whistle Blower.

I am sorry to say but I am convinced that still there is a lot to be done in our society on civil rights issues. That's why I have decided to write this paper with explicit citations that manifest the degree of ostracism, retaliation and harassment I had to bear with. I hope these citations do not cause any hatred for any community or sect. After all we are first human beings; the religion, nationality, and skin color come next. I can not avoid giving an example to illustrate how similar we are in our inner layer though we come from different backgrounds; research shows that the information content of almost all natural languages, which are representation of our minds and emotions, are same, be it English in Europe, Tamil in India or French in African continent. The source of ostracism or racism is within us, in our human mind. It only takes different form and shape in different contexts in all society but with varying degree of propensity.

In the Fall of 2005 GWU administration initiated a process to revoke the tenure of Prof. Saha and the first step of faculty deliberation began. The panel chaired by Prof. Joan Schaffner of the Law School of GWU made this trial a lynching of all the values for which American Education System stands for. The panel even refused to consider the Academic Vandalism for their consideration and refused to include full evidential record. The panel failed to show courage in asking GWU to produce paper record that was created secretly by Lehman-Tong administration for taking action against Prof. Saha.

Schaffner panel sold its moral responsibility for its own survival with the current administration of GWU. The deliberation of the Schaffner panel clearly points out one important short coming of GWU faculty code: "the requirement of courage to stand for principles".

Lehman-Tong administration of GWU mainly brought two charges against Prof. Saha: (1) Personal neglect of professional responsibilities, and (2) Gross and Personal misconduct that destroys academic usefulness. Because of lack of evidence, the Schaffner panel had to acquit Prof. Saha of the second charge. But the panel upheld the first charge of persistent neglect of professional responsibilities which provides adequate cause for tenure revocation. Schaffner panel in a naked way failed to observe (I strongly believe they did it intentionally to save their own job) the pandemonium of ostracism and retaliation and the degree of hostility under which a person can hardly function. Professor Schaffner and her colleagues on the panel live in a fantasy land where the ruling class after imprisoning a man in a cage expects him to grow beautiful roses outside in their flower garden.

The GW Hatchet correctly pointed out GWU faculty code admits four possible adequate causes for tenure revocation : (a) Incompetence - not a charge in Saha case, (b)Lack of scholarly integrity - not a charge in Saha case, (c) Persistent neglect of professional responsibilities- upheld charge against Saha, and (d) gross personal misconduct that destroys academic usefulness - failed charge against Saha.

What GW Hatchet failed to point out is that VP Lehman already tried the avenue (b) of Lack of scholarly integrity in 1999 and had to withdraw the charge of plagiarism after investigation. He also tried avenue (a) of Incompetence in 2005 but the evidence he manipulated was found to have no merit and proved only his own incompetence.

The extreme nature of ostracism and retaliation is in the details of the events some of which are outlined later in several sections of this paper. Yet I was always available for teaching, maintaining office hours and taking care of the students. Every semester I gave extra lectures in the weekends (on average three/four two-and-half hour lecture) which I wasn't officially required to. In my nineteen years of teaching here at GWU, I never missed even one lecture and I am very proud of that. In spite of adverse situation created by the administration, I always managed to submit final grades within 72 hours of the exam. Even after the whistle blowing, I was available for meetings and committee work if they wanted me to do so; but unfortunately they did not ask me and I did not ask for their social interaction to make them uncomfortable. I did not hear a single knock on my door for social interaction over a period of ten years (except three or four knocks by Prof. Lang during his chairmanship for official matters only); more details are in the section under Itemized List of Retaliations by GWU. In summary, I led my professional life in the department exactly the way they wanted me to live, I did what they wanted me to do (such as teaching) and I did not cross the boundary imposed by them to make them uncomfortable. I kept a low profile as was suggested by President Trachtenberg.

In the following I dispute the deliberation of the Schaffner panel and outline the rationales for the Appeal. Before presenting the arguments for the appeal, first a few sections have been devoted to outline some important events and actions of GWU administration in somewhat chronological manner. These sections provide the necessary background and are essential for manifestation of the degree of harassment, retaliation and ostracism imposed over last one decade. The arguments are followed by a few Appendices. Debabrata Saha : A Brief Background (Appendix A), The Time Line (Appendix B) and Chronology of Last one Decade (Appendix E) provide executive style summary of the relevant events before and after the Academic Vandalism of 1996; perhaps reading the appendices in this order will save time on part of the readers.

Faculty hearing as described by the faculty code is a process open to public; it is a public hearing. Therefore, there is no restriction of secrecy on the entire process or its finding. Unlike the original thirty seven page document that was submitted to Ramaker-Wooldridge committee in 1997, this paper on social enigma has no problem of legitimacy in sharing with others. Most of the events and citations in this paper are from the transcripts of seven hearings that are supposed to be public. At this time, in the Fall of 2006, the second step of faculty deliberation is about to begin. GWU Senate Dispute Resolution Committee will be taking the case in its hand.

We must remember:

As forgiveness is divine and humane, punishment is just and essential for social balance.

Appendix G
Exhibit 154
Plaintiff Exhibit 49
1 page

August 29, 2005

Hi Can:

This morning Dr. Saha came in and asked me for enrollment figures for ECE 203-10, ECE 241-10, and ECE 243-10. I gave them to him. He was also checking the days, time, and location of the classes. ECE-241 is being offered on Thursdays at the same time as ECE 243. I told him that according to our schedule Dr. Lee is teaching ECE 241-10. He is upset that Dr. Lee is teaching ECE 241-10 according to the schedule on the web. HE is the course director and HE should be the one to decide who is teaching that course. He wants to teach that course. He's been teaching that course since 1986 and doesn't feel that Dr. Lee should be teaching that course. He brought me a copy of the ECE classes taken from the printed schedule booklet that was printed months ago. He says someone is shifty about changing the schedule and should not be in academia. He said he would most likely be in tomorrow morning and wants ECE 241 to be put back to Wednesday evenings. He will check to see that it's been done.

Debby
(Signature)

125 (2)

FILED
MAR 16 2009
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 08-733

In The

Supreme Court of the United States

Debabrata Saha,

Petitioner

v.

Donald Lehman, individually and in his capacity as Executive Vice President for Academic Affairs, The George Washington University,

Timothy Tong, individually and in his capacity as Former Dean of School of Eng. and Applied Science, The George Washington University,

and

The George Washington University,

Respondents

On a Writ of Certiorari
To The United States Court Of Appeals
For The District of Columbia Circuit

PETITION FOR REHEARING

Debabrata Saha (pro se)
9409 Fairpine Lane
Great Falls, VA 22066
(703) 757-5418

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PETITION FOR REHEARING

I. Introduction

Pursuant to Supreme Court Rule 44.2, Petitioner Debabrata Saha who is a tenured professor in the George Washington University respectfully seeks rehearing of the Writ Petition that has been denied on February 23, 2009 without any expressed opinion. The rehearing is warranted because of intervening circumstances and substantial grounds not previously presented.

This case addresses specific federal questions that have exceptional importance in the governance of university teaching profession. Petitioner has been teaching in GWU since 1986. In 1997 GWU President Trachtenberg labeled the petitioner as a whistle blower for his role on matters of academic integrity; since then respondent VP Lehman suspended petitioner four times in eight years. In the past, each time petitioner has been exonerated and reinstated. But the last suspension in the fall of 2005 and associated constitutional violations (Fourth and Fourteenth Amendment) marked the beginning of the very first attempt of tenure revocation in the 187 years history of GWU.

The notion of tenure is an integral part of American higher education. Tenure's *"real concern is with arbitrary or retaliatory dismissal based on administrator's or trustee's distaste for the content of a professor's teaching or research, or even for positions taken.....It is designed to foster our society's interest in the unfettered progress of research and learning by protecting professor's*

freedom of inquiry and instruction" Re. Browzin v. Catholic University, 527F.2d 843 (D.C. Cir 1975).

Petitioner's 1996 whistle blowing is the root cause for administration's distaste for the petitioner. Since then Lehman administration of GWU has been guided by **limitless malice and vengeance**, the very elements against which tenure is designed to provide protection.

The petition for Writ and this petition for Rehearing are ***based on the assumption that we live in a society where quality of justice is expected to be at least marginally superior to the quality of justice in Late Saddam Hussein's dictatorial Iraq.*** But GWU administration with its puppet committees (similar to those of Saddam Hussein's) proved it to be otherwise. ***This is a national disgrace in the capitol of the Nation which needs correction.*** President Barack Obama received it only by inheritance. The irregularities consist of

- Multiple Frauds by Executive VP Lehman (one of which is proved with certainty from direct testimony of President Trachtenberg),
- Glaring multiple violations of Faculty Code by Trachtenberg,
- Kangaroo Court conducted by GW Law School Professor Joan Schaffner,
- Negligence, failings, and indifferences of the lower courts to a pro se litigant professor who blew whistle and risked his career only for maintaining Academic Integrity.

These extreme irregularities proved that the integrity of Justice has been very much compromised, and rehearing of the petition for writ is essential. ***Petitioner respectfully appeals to this Court for a rehearing and a published opinion on this case.***

The following is a list of intervening circumstances and substantial grounds not previously presented:

1. **Wrongful Termination**: GWU did not seek the approval of Board of Trustees (as outlined in the Faculty Code) to revoke petitioner's tenure. After failing to revoke tenure, GWU resorted to a fraudulent letter (Appendix A) to terminate petitioner's position. This letter without bearing any signature does not have any legal merit.

2. **Failed Faculty Code**: GWU Faculty code failed to function (Re. Appendix B).; now remedy lies with the Board of Trustees and/or intervention of this court through granting writ.

3. **Financial strangulation**: GWU denied any raise in salary over one decade since Whistle Blowing in 1996. Effective March 1st, 2007 GWU stopped petitioner's paycheck violating Lehman's agreement (Appendix C).

4. **Premeditated campaign of defamation of petitioner's teaching and research.**

5. **Premeditated Character Assassination of petitioner:** GWU wrongfully labeled the petitioner with **the image of a Mass Killer** prior to Civil Right Violations (42 U.S.C. § 1983) from which this present case originated from.

II. Reasons for Granting Rehearing

A. *The Respondents failed to respond to the Petitioner's allegations made in his petition for Writ.*

Petitioner requests this court to asses this failure in the light of Intervening Circumstances presented next.

B. Intervening Circumstances and Grounds not previously presented.

The following circumstances present overwhelming material facts which establish that respondents ***all along*** have been guided by sense of extreme malice and vengeance, and premeditated plots of professional defamation and character assassination ***before and after*** resorting to entrapment and violation of petitioner's fourth and fourteenth amendment rights as means for ***initiating petitioner's tenure revocation.***

1. Wrongful Termination:

Tenure can be revoked only following procedures in Faculty Code, an essential part of which is the approval of the Board of Trustees, as mandated by Article B[3]-[4], p.19. This Article is also the only provision for terminating a service.

B [3]-[4], p.19:

"[3]. Appointments and actions affecting renewal of appointments, promotion, tenure designation, and termination of service shall normally follow faculty recommendations. Departure from this standard shall be limited to those cases involving compelling reasons. ....."

[4]. Faculty recommendations concurred in by the appropriate administrative officers shall be transmitted by them to the President, who shall transmit them to the Board of Trustees[1]. Variant or nonconcurring recommendations ....."

On December 28, 2006 President Trachtenberg notified Prof. Saha in writing that VP Lehman recused himself. Thereafter President Trachtenberg did not seek approval from Board of Trustees to revoke petitioner's tenure, and, therefore, petitioner's tenure was never revoked. Petitioner was never given any termination letter.

After failing to revoke tenure, GWU resorted to a fraudulent letter from some John Williams Jr. (Appendix A) to terminate petitioner's position and stop paycheck effective March 1st, 2007. This letter produced by GWU almost one year after March 1st,

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[1]The meaning of "transmit" here is guided by GWU's practice and procedures which implies approval of Board of Trustees. Plaintiff's tenure designation had to be approved by the Trustees. In other instances, even when faculty recommendation is tenure denial (e.g. Kakes v. GWU: 683 A.2d at 130), GWU administration's past practice has been seeking the approval of Board of Trustees, not just transmitting the faculty recommendation as matter of courtesy.

2007 does not mention the office of origin and does not bear any signature; ***the letter, therefore, does not have any legal merit***. Also, John Williams needed a Declaration under penalty of perjury to introduce the unsigned letter to the Court.

In absence of approval from Board of Trustees, as required by the Faculty Code, John Williams' letter which does not have any legal merit constitute GWU's fraud in terminating petitioner's position.

2. Failure of GWU Faculty Code

GWU Faculty Senate, after recognizing petitioner's May 9, 2008 Grievance, failed to appoint a mediator and follow through as mandated by the Code[2]:

Prof. Kurt Darr, Chair of Senate Dispute Resolution Committee, in a joint meeting on Srptember 26, 2008, recused himself from decision making authority (Rc. Appendix K), while Prof. Arthur E. Wilmarth, Chair of Senate Executive Committee refused to intervene.

The Faculty Code thus failed to function. The ultimate authority over the Code, however, lies with Board of Trustees as claimed in its proclamation[3].

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[2] *"the Chair of the Dispute Resolution Committee shall promptly appoint a special mediator of appropriate qualification to assist the University and the aggrieved party to resolve the dispute..."* (pp. 24-25, Faculty Code).

[3] *"The Board of Trustees of the George Washington University, by virtue of the authority vested in it by the University Charter, hereby establishes the following Faculty Code...."* (p.1, Faculty Code).

The petitioner, therefore, wrote to Chair W. Russel Ramsey of the Board of Trustees (Appendix B), but the Trustees did not respond even after several reminders.

In this unique situation, the only plausible solution is the intervention of this court. ***The situation, therefore, warrants this Court's approval of the Rehearing and granting the Petition for Writ.***

3. Financial strangulation

A. Failure in honoring written agreement:

As per Sept. 30, 2005 letter of Vice President Lehman (Appendix C), petitioner is on paid suspension until further notice. No further notice has been given since Sept. 30, 2005 Therefore, by stopping petitioner's paycheck effective March 1st, 2007, respondent GWU failed to honor the written agreement.

B. Financial ruin:

After Whistle Blowing, in a one-to-one meeting in 1997, while President Trachtenberg suggested that petitioner stay home during the summer months without doing consulting, the administration stopped raise in salary. Petitioner's salary in 2007 remained the same as he had in the beginning of 1996, except for a difference of 394 dollars over a period of eleven years. Following suggestion of Trachtenberg he did not pursue consulting over one decade. He kept his word and pursued only research during summer months over one decade.

4. Premeditated campaign of defamation in teaching and research

Defamation in Teaching: In the Schaffner Panel Hearing, Defendant GWU presented Prof. Roger Henry Lang, a former EECS Dept. Chair, as a witness to tarnish petitioner's teaching credential; Lang testified under oath that petitioner Saha taught only three or four courses, and it was difficult to assign courses for him. The panel was also presented other lies to defame petitioner's professional activities.

Appendix D is a professional sketch of petitioner; it confirms that Prof. Saha taught a dozen of courses, nine of which were of graduate level; ***he did not teach just three or four courses.***

Defamation in Research:
GWU's Intellectual Stalwart, VP for Academic Affairs, Donald Lehman, in unequivocal terms, testified to the Schaffner Panel that Prof. Saha did nothing in terms of research.

VP Lehman, on May 10, 2007, in connection with petitioner's Grievance, was given the opportunity to qualify his position on petitioner's research. GWU's Intellectual Stalwart chickened out and refrained from answering.

Appendix E is a Summary of petitioner's recent research work which is yet to be completed. Academic freedom usually does not compel any tenured faculty publicize his or her research untimely before it is completed. Yet, petitioner Saha is making this Summary available for this Court. This Court is welcome to seek opinion from any

organization of international reputation on the merits of petitioner's research.

5. Premeditated Character Assassination by the Image of a Mass Killer

Since petitioner blew whistle on May 15, 1996 through his "Dear Colleague" letter, GWU administration led by VP Linda Salamon and Respondent Lehman secretly tried to label the petitioner as a security threat for the community, though there was absolutely no provocation on the part of the petitioner. After GWU's violation of petitioner's civil rights on Sept. 1st and Sept. 2nd of 2005, at least a dozen of documents on this matter have been secured.

These documents along with direct testimonies at GWU's Schaffner Panel Hearing established with certainty that Lehman administration, out of malice and vengeance, singled out petitioner as a thorn on their way and decided to label him with the image of a Mass Killer. ***They compared the petitioner with a Mass Killer at Concordia University and installed panic buttons in multiple locations in the Academic Center***, where Prof. Saha's office and mail box were located. Over a period of eleven years since whistle blowing, Respondent Lehman sent security officers and plain clothes officers inside and outside petitioner's classroom on multiple occasions. Lehman testified during GWU's Hearing that during the entire period he took the office of VP for Academic Affairs, he did not send plain clothes police to any classroom but petitioner's. As would be revealed shortly, this was a ***premeditated plot to assassinate***

the character of petitioner as revenge for whistle blowing.

Premeditated Plot of Character Assassination: Mass Killer

The barrage of discriminatory acts committed by Lehman administration over one decade was hard to explain till an e-mail of Respondent Lehman (Appendix F) was discovered. This e-mail to ECE Chair Korman revealed for the first time the existence of Panic Buttons in the Academic Center.

After tracing through all available documents it was found that the idea of installing Panic Buttons was conceived of before Aug. 20, 1996 (Re. Dolores A. Stafford's memorandum in Appendix G), i.e., within about three months from May 15, 1996 when petitioner blew whistle through his "Dear Colleague" letter. There was no unpleasant incident during those three summer months when school was mostly closed. ***Thus, the administration conceived of the idea of Panic Buttons in cool brain.***

As per July 31st, 1997 memo (Appendix I), Prof. Zaghloul became concerned of Physical safety after "February incident" in that year. But as per Feb.4, 1997 memo (Appendix H), installation order of Panic Buttons was completed on or before Jan. 30, 1997, i.e., before the "February incident". Furthermore, panic buttons idea was conceived of in the previous year in Aug. 1996, long before the "February Incident". Thus it is established Prof. Zaghloul lied in her July 31, 1997 memo. On July 31st, 1997, there was a high level administrative meeting (which VP Lehman was scheduled to attend) in which ***similarity***

was drawn between Prof. Saha and a Mass Killer at Concordia University. Thus, decision on Panic Buttons on account of Prof. Saha was taken **before** the reported "February incident" and six months (i.e. Jan. 30-July 31st) prior to the high level administrative meeting which was **orchestrated only to associate the image of a Mass Killer to the character of Prof. Saha.**

Moreover, the "February Incident" is completely fictitious because there was no unpleasant incident in EECS Dept in the month of February. Therefore, July 31st, 1997 high level meeting was **a premeditated attempt to assassinate the character of petitioner Saha by labeling him with the image of a Mass Killer[4].**

In Walters v. Churchill (No. 92-1450), respondent Churchill after being fired from nursing job sued under 42 U.S.C.-1983. District Court awarded summary judgment against Churchill. Churchill appealed and Court of Appeals, seventh circuit, reversed the judgment and held that employer and supervisor were not entitled to summary judgment in wrongful termination action. Employee Churchill produced enough evidence to create a material issue of disputed fact about employer's actual motivation for the job termination.

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[4] An Unknown Movement: On Aug 22nd, 1997, Rachelle Heller e-mailed VP Lehman and wrote: "I would be happy if Steve did not meet with Deb as that seems to stall our **forward movement**." (*Note: here Steve means President Trachtenberg and Deb means Prof. Saha*).

In the Supreme Court decision, Justice O'Connor, joined by the Chief Justice, Justice Souter, and Justice Ginsburg, in their conclusion, wrote:

"Nonetheless, the District Court erred in granting petitioners summary judgment, since Churchill has produced enough evidence to create a material issue of disputed fact....."

In case of Saha v. Lehman et al, intervening circumstances present overwhelming material facts that establish the motivating factors behind wrongful termination of Petitioner Saha's employment. ***The decision of the Court of Appeals, D.C. Circuit, therefore, is in direct conflict with the decision in Walters v. Churchill, made in the Seventh Circuit that was later endorsed by the Supreme Court***

III. Role of this Court in the Mission of Academia

Teaching is a noble profession, and any institute of learning must have the obligation of maintaining the highest standard of ethics, morals, and justice. ***The truth does not have to show respect to any administration, to any institution, or even to any society. Rather, society, institution, and administration have to bow down and show respect to the truth.***

Since prehistoric ages, academia has been the guardian of moral principles of the society, and legal principles are supposed to be reflection of the moral principles. Therefore, this Court, by virtue of the responsibility delegated to it for the society, has the obligation to illuminate the truth even though the respondents may try to hide them ***under the shield of internal affairs.***

A gentleman and a President, who helped building this nation, when first elected to the Congress, wrote in the Congressional directory that his education was defective. In spite of such deficiency, he was ***courageous*** to start a long term mission for which even Communist Karl Marx wrote a congratulation letter, and we all have witnessed influence of that ***courage*** in 2008 Presidential election. Petitioner strongly believes, in writing the opinion on this case, it is not the legal minds of nine Honorable Justices of this Court but their courage will be tested. ***Petitioner respectfully appeals to each member of the bench to exercise courage to speak his/her mind and illuminate the truth.***

Furthermore, the petitioner humbly reminds the bench that the bigger picture of this case is all about academic integrity and moral bringing up of

children in Academia which is supposed to transcend race, religion, color, gender and national barrier, and is supposed to strengthen the security of the nation not by only implanting electronic gadgets here and there, but by properly educating our children and spreading the brotherhood through them beyond the geographic boundary of the nation. ***So, in writing the opinion on this case, the courage of the bench is of immense national importance.***

This court has moral obligation to take necessary steps

(a) ***To ensure that quality of justice is at least marginally superior to the quality of justice in Late Saddam Hussein's dictatorial Iraq.***

(b) ***To provide best possible protection for academic integrity and make arrangements so that moral bringing up of our children in the capitol of the nation is trusted only in the hands of moral ones, and***

(c) ***To deter Anti-American Activity of GWU Administration from vandalizing the sense of decency, legal and moral rights that is protected under United States Constitution. GWU's vandalism over twelve years is reflected in the intervening circumstances and substantial grounds outlined above.***

CONCLUSIONS

For the foregoing reasons, the petition for rehearing should be granted, the decision of February 23, 2009 vacated, and the case scheduled for argument.

Respectfully submitted,

Debabrata Saha (pro se)
9409 Fairpine Lane
Great Falls, VA 22066
(703) 757-5418

Date: March 16, 2009

CERTIFICATE OF GOOD FAITH

I hereby certify that this petition for rehearing is presented in good faith and not for purpose of delay.

Respectfully submitted,

Debabrata Saha (pro se)
Date: March 16, 2009

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEBABRATA SAHA, Ph.D.
Plaintiff,

v. CA NO. 08-00087 RCL

GEORGE WASHINGTON UNIVERSITY, et al
Defendants.

DECLARATION OF JOHN F. WILLIAMS, JR.

1. My name is John F. Williams, Jr.
2. I am and was at all times material hereto the Provost of The George Washington University.
3. I am competent to execute this declaration, which I do upon personal Knowledge.
4. Attached hereto is a true and correct copy of the March 1, 2007 letter (with attached memorandum from Dean Fredrick M. Lawrence) that I sent to Professor Debabrata Saha in my capacity as Provost, notifying him that his tenure and faculty appointment was terminated by the University effective March 1, 2007.
5. I had this letter delivered to Professor Saha by Courier and regular mail on March 1, 2007.

I HEREBY CERTIFY under penalty of perjury that the foregoing is true and correct.
/s/
John F. Williams, Jr.
Date 2/20/08

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, D.C.

Via Courier and First Class Mail

March 1st, 2007

Professor Debabrata Saha
9409 Fairpine Lane
Great Falls, VA 22066

Dear Professor Saha:

I have been informed by President Stephen Joel Trachtenberg that Executive Vice President Donald Lehman recused himself from determining under Section 7 of the Grievance Procedure, whether there are compelling reasons not to implement the Dispute Resolution Committee's decision to terminate your tenure for adequate cause. He has further informed me that Dean Fredrick Lawrence, to whom that role was delegated, found no compelling reasons (as per the enclosed memorandum). Therefore, the decision will be implemented.

Your tenure, and your University faculty appointment, is terminated effective March 1, 2007.

Appendix B

Debabrata Saha
9409 Fairpine Lane
Great Falls, Viginia 22066, U.S.A.
(703)757-5418

W. Russel Ramsey
Chairman, The Board of Trustees
The George Washington University
Rice Hall, 2121 Eye St., N.W., Suite 802
Washington, D.C. 20052

December 1, 2008

Dear Mr. Ramsey:

As a tenured member of GWU Faculty, I write to you on the matter of a grave situation, the governance of which lies with the Board of Trustees as mandated by its proclamation:

"The Board of Trustees of the George Washington University, by virtue of the authority vested in it by the University Charter, hereby establishes the following Faculty Code...." (p.1, Faculty Code)

I joined GWU in 1986 and the Board of Trustees awarded me tenure effective Fall of 1993. I would like to draw your attention to following two issues:

(1) Effective March 1st, 2007, GWU administration, without due process guaranteed in the Faculty Code, stopped my pay check. The administration neither resorted to revocation of my tenure following Faculty

Code (Re. Article B[3]-[4], p.19) nor issued any letter of termination.

(2) Lately, I have been placed between rock and hard place when the Faculty Senate, after recognizing my May 9, 2008 Grievance failed to appoint a mediator and follow through as mandated by the Code:

"the Chair of the Dispute Resolution Committee shall promptly appoint a special mediator of appropriate qualification to assist the University and the aggrieved party to resolve the dispute..." (pp. 24-25, Faculty Code).

Prof. Kurt Darr, the Chair of the Senate Dispute Resolution Committee, in our joint meeting on Srptember 26, 2008, recused himself from decision making authority, while Prof. Arthur E. Wilmarth, Chair of the Senate Executive Committee refused to intervene.

The Faculty Code failed to function. Therefore, the final and ultimate authority on the two issues of University Governance, by virtue of the proclamation above, now lies with the Board of Trustees. I, therefore, request your attention and authoritative intervention on the two issues of grave importance. I would appreciate your response to this matter at your earliest.
Sincerely,

/s/
Debabrata Saha
Department of Electrical and Computer Engineering
School of Engineering and Applied Science, GWU

Appendix C

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON, D.C.
Executive Vice President for Academic Affairs

November 18, 2005

Professor Debabrata Saha
9409 Fairpine Lane
Great Falls, VA 22066

Dear Professor Saha:
Professor Korman informed me of your November 10, 2005 inquiry regarding your teaching status for the Spring 2006 semester. As I stated in my letter to you dated 29 August, as modified by my letter dated 3 October, you are on paid suspension until further notice.

If you have any question, please feel free to call me.

Sincerely,

/s/
Donald R. Lehman

cc: Professor Korman

Appendix D

Professional Sketch

Debabrata Saha
9409 Fairpine Lane
Great Falls, VA-22066
(703) 757-5418

February, 2009

Summary: Career objective is a Teaching and/or Research and Development oriented position in which my research experience in digital communications and information theory along with my backgrounds in Physics, Electronics, and Networking can be made useful in a meaningful way, and I would be benefited from my experiences of (a) twenty years of University teaching and research as a tenured member of faculty, and (b) consulting in Satellite and Mobile Communications industry.

Academic Background

Science : B. Sc., Physics (Honors), Univ. of Calcutta, India 1976
Technology : B. Tech, Radio Physics & Electronics, Univ. of Calcutta, India, 1980
Applied Science : M. A. Sc. , Communications, Univ. of Toronto, Canada, 1982
Engineering: Ph. D., Computer, Information & Control Engineering, Univ. of Michigan, Ann Arbor, Michigan, 1986

Awards and Honors :
1972-1975 : National Scholarship, Gov. of India
1976-1979 : National Scholarship, Gov. of India
1980-1982 : Rai Bahadur Jogendra Nath Ghosh Overseas Scholar, University of Calcutta
1983-1985 : University of Michigan CICE Fellowship

Professional Society

- Senior Member of IEEE
- Former Chairman of Washington D.C.-Northern Virginia Section of IEEE Information Theory Society
- Former President and Co-Founder of Students' Governing Body Union, The University Colleges of Science & Technology, Univ. of Calcutta

Goal

- Engineering R&D type research that applies to mobile, satellite and underwater communications,
- Theoretical Research in Information and Probability Theories

Work Experience

- 1986- University Teaching and Research, **the George Washington University**, Washington D.C.20052
  Area: Communication Engineering and Information Theory
- 1993-'96: Engineering Consulting, **Hughes Network Systems**, Germantown, MD
  Area: Bandwidth Efficient Modulation & Signaling, and Networking (CDPD systems)
- 2007Summer:Engineering Consulting, **Hughes Network Systems**, Germantown, MD
  Area : Satellite Link Adaptation

(a) **Teaching** : ***1986-2007***

Graduate Courses Taught at the George Washington University

1. Probability Theory and Stochastic Processes (ECE-203)
2. Information Theory (ECE-241)
3. Coding Theory (ECE-242)
4. Communication Theory I (ECE-243)
5. Communication Theory II (ECE-244)
6. Digital Communication (ECE-246)
7. Computer Networking I (ECE-248)
8. Computer Networking II (ECE-249)
9. Information Theory II (Special Topic Course; prerequisite ECE-241)

Undergraduate Courses Taught at the George Washington University

1. Circuit Theory (EE-12, former EECS Dept.)
2. Engineering Mathematics (Applied Science-114, Math-112)
3. Communications Eng. Laboratory (EECS-146)

(b) **Research**: ***1986-***

- Engineering Research in the area of Digital Communications and Networking
- Supervision of Doctoral Theses in the areas of Digital Communications, Networking and multiple-access communication
- Theoretical Research in the area of Information and Probabilities Theories
- Engineering Consulting in local industry

Partial list of Published Work and Work in Progress

Book (in progress) : : *A treatise on Information*

Nearly half of the book is complete; a few chapters are tied to Saha's research; pending upon completion of the research

Research (in progress) : *Information, Randomness and Complexity*

Since 1920's, a few attempts have been made to establish a general measure of information but without any success. Saha introduces **a new measure** with the following highlights:

- It **does not** require any **underlying probability structure**
- Shannon measure becomes a special case when there is a probability structure
- It computes the complexity of a finite sequence
- It establishes that **notion of information measure should preclude notion of probability**

Saha has been working on this measure for some years. Progress has been made but the work is yet to be completed.

Research (completed, unpublished):

"Equalization and Q^2PSK Signaling," Debabrata Saha, Dept. of Electrical Eng. And Computer Sc., The George Washington University, Washington, D.C.

Research (published):

Debabrata Saha and Stanley E. Kay, "Cellular Digital Packet Data Network," IEEE Trans. On Vehicular Technology, Vol.46, No.3, pp.697-706, August 1997.
Rashid Al-Naami and Debabrata Saha, "Status Sense Multiple-Access Communication (S^2MA) Communication," IEEE Trans. On Commun,. Vol. 40, No. 6, pp. 996-1002, June 1992.

Osama El-Ghandour and Debabrata Saha, "Differential Detection in Quadrature-Quadrature Phase Shift Keying (Q^2PSK) Systems," IEEE Trans. On Commun,. Vol. 39, No. 5, pp.703-712, May 1991.

Debabrata Saha, "Channel Coding with Quadrature Quadrature Phase Shift Keying (Q^2PSK) Signals," IEEE Trans. On Commun,. Vol. 38, No. 4, pp.409-417, April 1990.

Debabrata Saha and Theodore G. Birdsall, "Quadrature-Quadrature Phase Shift Keying," IEEE Trans. On Commun,. Vol. 37, No. 5, pp.437-448, May 1989.

D. Saha, "Quadrature-Quadrature Phase Shift Keying with Constant Envelope," US Patent, Number : 4,730,344; March 1988.

D. Saha, "Quadrature-Quadrature Phase Shift Keying," US Patent, Number : 4,680,777; July 1987.

Appendix E

Information, Randomness and Complexity

Debabrata Saha
9409 Fairpine Lane
Great Falls, VA-22066, U.S.A.
(703) 757-5418

Summary

This work addresses the general issues of randomness, information content and complexity of a source. It introduces a measure of information without requiring any underlying probability structure. The following are the highlights of the work which is yet to be completed.

- Shannon's derivation of information measure is quite elegant, yet his information theoretic entropy is identical to that of Boltzmann's thermodynamical entropy. Shannon arrived at the same result due to Boltzmann because one axiom in Shannon's formulation, though stated from a different perspective, is mathematically equivalent to an axiom used for deriving Boltzmann's relation. This mathematical equivalence of two different sets of axioms represents the underlying connection between entropies in Physics and Shannon theory. However, when there is no underlying probability structure, Shannon theory fails to be meaningful for information measure.

- Information theory should stand alone without requiring the discipline of probability theory. It is possible to conceive of a measure of descriptive information without requiring an underlying probability structure. This measure leads to Shannon measure when there is an underlying probability structure. Shannon measure is thus a special case of the new measure. The new measure is strictly deterministic, context free, and computable.

- Finding the underlying probability structure of a given source, even when it exists, is very much challenging. With a finite length observation, relative frequency approach of finding estimate of this structure often lacks conceptual merit. Use of the new measure in computing information content in a sequence may spontaneously give rise to the *natural* alphabet of the source and the corresponding probability structure without running into any conceptual shortcoming. Thus, the notion of information measure should preclude the notion of probability.

Appendix F

Plaintiff Exhibit 25
1 page

On 9/2/05, Donald Lehman wrote:
Can:

Thanks for your message. After reading Brana's message, I raised several questions with Tim Tong. I don't believe he has yet had a chance to answer them.

I understand fully your concerns. At the same time, I don't know what Professor Saha knows or does not know. For example, are we sure that he has actually seen and read my letter to him?

With regard to your other suggestions, everymen's security on campus is top priority. It appears that Professor Saha left the classroom in a peaceful manner last evening. If he has seen my letter, he should know that he is not to be teaching or appearing for classes, etc. Therefore, I do not think it is wise for us to have obvious coverage of the classes that he was originally assigned to teach. However, for the first few classes, it is wise to have a plain-clothed officer near by.

With regard to the Department, the steps you outline appear to be reasonable through the use of the "panic" buttons that have been placed there for that purpose.

9/6/2005

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Appendix G

Exhibit 46
Plaintiff Exhibit 36
1 page

TO: Dr. Mona Zaghloul, Chair
Electrical Engineering and Computer Science
Department

FROM: Dolores A. Stafford, Director
University Police Department

Date: August 20, 1996

I am providing two estimates for your review. The price for one panic button in your area would be $305, the price for two panic buttons would be $510. Please let me know if you are interested in pursuing either of these options. If you have any further questions or concerns, please give me a call at 994-6948. Thanks.

DAS/akh

Please forward to the Dean with request of two buttons.

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Appendix H

Plaintiff Exhibit 28
1 page

TO: Dean G. Frieder, SEAS

FROM: M. E. Zaghloul, Chair, EE&CS (Signature)

Date: February 4, 1997

RE: Cost of Security System

Per our discussion after our meeting with Dr. Lehman on Thursday, January 30, 1997 I am attaching a copy of the letter sent by Dolores A. Stafford of Campus Security regarding the cost of setting up a panic button system for my office in the Academic Center. You stated that you would pay the cost, which appears to be approximately $815. Please let me know if we should contact Ms. Stafford or if your office will take care of that. Thank you.

MEZ:mh

Attachment

Appendix I

Exhibit 78
Plaintiff Exhibit 26
2 pages
DRAFT

The George Washington University
Washington D.C.
INTERDEPARTMENTAL MEMORANDUM

TO: File
From: M.E. Zaghloul, Chair, EECS (Signature)
Date: July 31, 1997
RE: Personnel Safety and other concerns relating to Associate Professor Saha

T. Mazzuchi called a meeting in the office of the University General Counsel at 11:00 a.m. Thursday, July 31, 1997. Present were: T. Mazzuchi, D. Fields, A. Woolridge, R. Pickholtz and myself. Dr. Lehman could not attend for personal reasons.

This memo was requested to record the main points of discussion and specific recommendations that were made relating to safety concerns.

The more recent background was recapitulated. It appears that shortly after an incident in the office of the Department of E.E. & CS in February, 1997 involving Dr. Saha, the University placed him on administrative leave. Subsequently it was necessary to send University security officers to ask Dr. Saha to leave a classroom. Thereafter, a committee of D. Ramaker and A. Woolridge investigated this latest affair and the written past record. The committee interviewed several people

who witnessed the events, and also obtained some written statements. Although I was informed that a report was issued by the committee, I have never received a copy nor anything in writing about the recommendations contained in that report. I have been given to understand that there was subsequent correspondence and oral communications by D. Lehman, President Trachtenberg, and T. Mazzuchi with Dr. Saha.

While the details of the report and correspondence were confidential, it was agreed at the meeting that a summary of the contents of the report, correspondence and communications would be sent to me so that I can properly do my job as chair and not be kept in dark.

I had expressed concerns for my physical safety after the incident in February and the University promptly installed a direct-line security alarm in my office and that of the front office staff. R. Pickholtz, upon his return from Sabbatical, also expressed apprehension. He was not totally aware of the events including the February incident, the removal of Dr. Saha by security, or the installation of security devices. Upon his discovery of this, he spoke with me and also with T. Mazzuchi about his concerns. The meeting today is the result.

R. Pickholtz proposed that before any further actions are taken in this connection, that bonafide security and behavior experts be called in to advise the process. This suggestion is informed by the "Cowen Report" that recounts the lessons from shooting of 5 faculty, 4 of whom were killed, at

Concordia University by another disgruntled faculty member in 1992. That report and other documents provide recommendations dealing with difficult people in the University setting, even the possibility of violence. Actions taken without the advice of experts in safety and behavior could seriously backfire. It was agreed that this suggestion be implemented in a "timely manner" and that information on process and progress would follow in writing to keep me informed.

At this point we can not allow ourselves to be lulled into a sense of false security through a directed reconciliation extracted from Dr. Saha that might be disingenuous. We need to gather counsel to find ways to help Dr. Saha without exacerbating the problem.

cc: T. Mazzuchi, A. Woolridge, D. Fields, D. Lehman, and R. Pickholtz

Appendix J

GWU's Discriminatory Actions against Petitioner Saha as part of the whole picture of Character Assassination:

- Creation of secret mail box to divert petitioner's mail
- Four suspensions over eight years, and reinstatements (except the last one) without apology
- Allegation of plagiarism and scientific misconduct which Lehman was forced to drop but without any apology
- Drawing similarity with a Mass Killer (*though the petitioner during his entire life literally never touched a fire arm, even not a pocket pistol, and to the best of his knowledge, he has never been accused of any activity criminal in nature in any of the three countries he lived in*) and installing Panic Buttons (**which were never triggered on account of Saha**).
- Isolating Saha from GWU community by excluding him from all committees including participation in Doctoral these and Qualifying Exams
- Social isolation through Ostracism; nobody knocked on his door for a decade for any social interaction
- Sending security agents and plain clothes officers inside and outside his classroom(s) on multiple occasions (at least in 1997, 1999 and 2005)
- Perp walking him on the campus on Sept. 1st and Sept. 2nd , 2005

Appendix K

Debabrata Saha
9409 Fairpine Lane
Great Falls, Viginia 22066, U.S.A.
(703)757-5418

Professor Arthur E. Wilmarth, Jr.
Chair, Senate Executive Committee
The George Washington University Law School
2000 H Street, N.W., Washington, D.C. 20052

October 14, 2008

Re: Saha's 2008 Grievance against The George Washington University Administration

Dear Professor Wilmarth:

This letter is based on the assumption that we live in a society where quality of justice is expected to be at least marginally superior to the quality of justice in Late Saddam Hussein's dictatorial Iraq. But GWU administration with its puppet committees (similar to those of Saddam Hussein's) proved it to be otherwise. Multiple Frauds by Executive VP Lehman (one of which is proved with certainty by direct testimony of President Trachtenberg), glaring multiple violations of Faculty Code by President Trachtenberg, Kangaroo Court conducted by GW Law School Professor Joan Schaffner, Intellectually impotent Moersen Committee's Report proved beyond any doubt that Saddam Husseins of America's Higher Education are still breathing

oxygen from our good old Mother Earth. For the sake of moral bringing up of our children they should not be on the campus. It is a shame that **Moral Bankruptcy** of Lehman administration failed America in Nation's Capital.

The **Root Cause** of this grievance started with my **1996 whistle blowing** when Dean Gideon Frieder threatened me in writing about revoking my tenure; it was an **unlawful intimidation** because the administration neither filed any complaint nor had any evidence of substance other than **Lies & Moral Bankruptcy of the following trio**

(a) VP for Academic Affairs, Linda Salamon,
(b) Dean Gideon Frieder, &
(c) Chairwoman Mona Zaghloul

The details are in the **37 page document** that was submitted to Wooldridge-Ramakar committee in 1997 and has been kept secret for **Eleven Years**. ***This intimidation violated all professional ethics and faculty rights mandated by the Faculty Code.***

GWU further compromised ethics of civilized world and University's responsibility to the community (Faculty Code p.2 & AAUP Guidelines p.3) by keeping Salamon- Frieder- Zaghloul trio on GWU Faculty and allowing them to continue to molest the moral character of our students through their proximity influence on our children. In one pile of evidence that was shared with Prof. Darr on September 26, 2008, there is a picture of a President of the University printed by students on the campus; it certainly shows that the moral taste of the campus is not where it should have been brought to. On most of the college campuses around the country, such

picture would have been unthinkable. **It demonstrates that ethics and moral values of administrators and faculty alike influence overall development of our students in very subtle way.**

This Grievance is a reflection of Prof. Saha's twelve years long struggle against lack of academic integrity, lack of ethics and void of morals in the administration of GWU.

Highlights of Sept 26, 2008 meeting for Substantiation of Grievance :

- At the beginning of the meeting I requested that representative of the General Counsel recuse himself. It was desired for fairness of the Grievance proceedings. But the representative declined to recuse himself and sat through the entire meeting.
- Prof. Kurt Darr recused himself from his role as Dispute Resolution Committee Chair by stating unequivocally : " I am not the decision maker". Then, the questions are : "who is the decision maker" and "how this substantiation process fits in to the guiding rules of the Faculty Code". Prof. Darr violated the governing rules of the Faculty Code. Following Article E [3], p.24 of the Faculty Code, now the Grievance should be addressed by the Dispute Resolution Committee and the committee

  "shall promptly appoint a special mediator of appropriate qualifications ...."

- Prof. Darr declined to examine many evidence and notes. In particular, he declined to

examine documents, transcript of audio tapes that prove fraud and perjury of high ranking GWU officials which would further enhance the Grievance.

- During the meeting Prof. Darr repeated many times : "I don't need to know those (evidence and events crucial to the Grievance)".
- **Shocking Revelation** : Prof. Darr acknowledged that in Fall 2006 deliberation of the appeal against Schaffner Panel decision, he did not participate and vote. When I confronted him questioning about his role, he said "eight fresh members were chosen" for the appeal and they took the decision; he personally did not have to know the major events and evidence that went into my appeal arguments. On the contrary, the record (Exhibit-46, Evidence Set E of Substantiation of Saha's 2008 Grievance) shows that Prof. Darr himself was a part of the NINE (not eight that he claimed) members committee which deliberated a UNANIMUS decision and Prof. Darr transmitted the Fraudulent statement of UNANIMUS decision to VP For Academic Affairs. After Lehman recused himself, President Trachtenberg engaged on that Fraudulent statement of UNANIMUS decision. Prof. Darr acknowledged his perjury, fraud and his role in tainting Prof. Saha's Tenure Revocation attempt which fell short of completion without administrative action and without Approval of Board of Trustees.

According to the Governance of Faculty Senate (Article E [2], p.24 of the Faculty Code), the Dispute

Resolution Committee is elected by Faculty Senate. After Prof. Darr acknowledged his wrong doings in the Fall 2006 Appeal process, and most importantly, after he relinquished his decision making authority on Sept. 26, 2008, the burden lies with the Faculty Senate. Therefore, I write to you to take necessary steps so that the Dispute Resolution Committee may go ahead with my 2008 Grievance and may ***"promptly appoint a special mediator of appropriate qualifications".***

I would appreciate your attention to this matter so that this Grievance procedure may start at the earliest.

Sincerely,

Debabrata Saha, ECE Dept, SEAS

Enclosures: (1) First two pages of "Substantiation of Saha's 2008 Grievance against The George Washington University", (2) Saha's Six pages of Arguments submitted in June 2008.

cc: Senate Executive Committee